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N A R R A T I V E

OF THE

T. Maygrave
Given to me by Mr. Light.
Proceedings of the PROVINCIAL COUNCIL

At P A T N A,

In the Suit of *Behader Beg* against *Nadara Begum*;

H. AND OF THE

SUPREME COURT of JUDICATURE at *Calcutta,*

In the Suit of *Nadara Begum* against *Behader Beg*
and OTHERS,

And in the CRIMINAL PROSECUTION instituted against
Nadara Begum and her Accomplices for FORGERY:

Forming together what is generally called in Bengal

THE PATNA CAUSE

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N A R A T I V E

Proceedings of the Provincial Council

In the Suit of B... against W... Begum :

MUSEUM
BRITANNICUM

SUPREME COURT of JUDICATURE at Calcutta,

In the Suit of W... against B... Begum :

And in the Criminal Prosecution instituted against
W... Begum and her Accomplices for Forgery :

Forming together what is generally called in Bengal

THE PATAKA CAUSE.

to the Supreme Court, as the Nature and Extent of that Jurisdiction have been interpreted and construed into a License. A Testimony for public and universal must carry Weight with it. When we see Men, who differ in their Interests, Principles, and Attachments, yet are united in the same Opinion, it is a strong Proof of the Justice of that Opinion. The Power of Inquiry, and the Power of Judgment, are the only Powers of Man, and of every Individual in every Rank, and of every Order of the State. It is not intended at this Time to enter into a Detail of the Complaints, but to show that they are of a Nature too serious, and too important, not to interest the Attention of the Publick in Great Britain.

NARRATIVE OF PROCEEDINGS IN THE PATNA CAUSE.

THE Complaints of the *British* Inhabitants of *Bengal*, against the Jurisdiction of the Supreme Court of Judicature, and the Conduct of the Judges, are of a Nature too serious, and too important, not to interest the Attention of the Publick in *Great Britain*.

In the very Commencement of the Exercise of this Jurisdiction, many People foresaw the evil Consequences which have since arisen from it, and frequent Representations on this Subject were transmitted from *Bengal* by the Members of the Supreme Council; but as Dissensions had unfortunately prevailed in that Body, and a constant Opposition of Opinion had appeared on this and almost every other Subject of Importance, these Remonstrances, perhaps for this Reason, did not meet with the Attention they deserved.

The Experience of five Years has now proved these Apprehensions to have been well founded, and at a Time, when the Spirit of Party is known to operate with as much Force as ever in *Bengal*, to extend its Influence universally, and to preclude private and publick Confidence; all the *British* Subjects of Rank, Fortune, or Ability, residing there, have united in a Remonstrance against the Jurisdiction

jurisdiction of the Supreme Court, as the Nature and Extent of that Jurisdiction have been interpreted and carried into Execution.

A Testimony so public and universal must carry Weight with it. When we see Men, who differ in their Interests, Pursuits, and Attachments, uniting in any one Cause, we must look for the Motive of their Unanimity in the Cause itself; to surmount the Force of Habits, Prejudices, and personal Attachment is beyond the Power of Intrigue; an Union existing in a single Instance only, of all Orders of Men, and of every Individual in every Rank, supposes not only a concurrent Sense of the common Dangers of their Situation, but an irresistible Conviction, which nothing but Truth could produce. It cannot rationally be accounted for on any other Principle.

It is not intended at this Time to enter at large into a Detail of these Complaints.

The following Sheets contain the History of a single Cause, lately decided in the Supreme Court, in the Course of which many new and important Questions arose;—the Determination of those Questions, and the Principles upon which they were determined, have excited a very general Alarm and Discontent throughout the several Provinces of *Bengal*, *Babar*, and *Orissa*; and have, if not wholly annihilated, at least so far impaired the Authority of the Country Courts, as to render them very incompetent to the Administration of Provincial Justice. It is not the Object of this Work to urge any Thing by Way of Charge against the Judges of the Supreme Court; but as they have declared from the Bench that they mean to transmit their Proceedings to *Europe* for Publication, and will not omit stating every Argument in Vindication of them; those Proceedings are, it is conceived, become a fair Subject for Comment and Discussion.—The Intent of this Publication is to establish this one Proposition, viz. “That the Constitution of the Supreme Court, exercising such Powers, and observing such Rules as it at present does, is neither adapted to the general Form of Government which subsists in *Bengal*, the particular Situation of the *British* Inhabitants there, nor to the Customs or Prejudices of the Natives, civil, moral, or religious.” Whether any political good Consequences shall be derived to this Country from the Establishment of this Proposition, must depend on the Wisdom and Liberality of our Rulers at Home.

A Dispute which arose between the Widow and Nephew of a deceased *Mahomedan*, Inhabitants of *Patna*, the capital City of the Province of *Babar*, 400 Miles distant from *Calcutta*, furnishing the fullest Proof of this Proposition—the Origin, Progress, and Termination of this Dispute therefore the Writer will proceed to lay before the Publick in the clearest and best Manner he is able.

He is well aware that this Task is attended with peculiar Difficulty; for notwithstanding the Multitude of Publications concerning this Country, which have at sundry Times issued from the Press, the ancient Constitution of its Government, the subsequent Alterations which that Government has received; the Customs, Manners, Laws, and Religion of the Natives, are still however far from being well understood by *Englishmen*: Besides, the Proceedings of the Supreme Court in the Cause itself are so voluminous and unconnected, that it is not easy to separate those grand Points, which deserve the Attention of the Publick, from the great Variety of less interesting Materials, which present themselves upon this Occasion.

Before I enter upon the Cause itself, it will therefore be necessary to premise a general Narrative, without which the following Circumstances would be unintelligible to an *English* Reader.

The *East-India* Company by Virtue of a Grant, which they received from the Emperor of *Hindustan*, have for fourteen Years possessed the Right of collecting the Revenues of the extensive Countries of *Bengal*, *Babar*, and *Orissa*. For several Years, after this Grant had been conferred upon them, they managed this important Business by the Agency of the Natives, *Mahomedans* and *Gentoo*, reserving the controuling Power in their own Hands. In a very few Districts, which had been ceded to them by former Treaty, the Management of this Business was committed immediately to *Europeans*.

The Administration of Justice to the Natives in Civil Causes, which by the Custom of the Country had ever been annexed to the Superintendence of the Revenues, was, with the same Exception of a few particular Districts permitted to remain with the Natives themselves. This System continued on the same Footing till the End of the Year 1769, when the President and Council, who then constituted the Government, thought proper to invest the covenanted Servants of the Company with the important Commissions of collecting the Revenues, and administering Justice to the Natives in Civil Cases; for which Purpose, one of such Servants was appointed to the Superintendence of each District.

They had not however at that Time a sufficient Insight into the Affairs of this Country to lay down precise Regulations for the Conduct of their Servants in these important Departments; but as soon as they obtained further Knowledge and Information, they established some Regulations on this Subject.

In the Year 1772, when the Government of *Bengal* was vested in a President and Council, and the present Governor-General *Warren Hastings* then held the Office of President, the Council justly deeming the Administration of Justice to the Natives to be a Matter of the most material Importance to the Welfare of the Community, took it into serious Consideration.

After

After much Deliberation they formed Courts upon a regular Establishment, nominated the inferior Officers who were to act in them, and drew up a Set of Rules for the Conduct of the Supervisors, who were the Judges, or, as they were called, the Superintendants of these Courts. At the same Time they constituted themselves a Court of Appeal, for revising, correcting, or reversing erroneous Judgments in these inferior Courts.

How far these Regulations were perfect or imperfect, need not be discussed here. It is sufficient to say that in framing them every Degree of Attention was paid to the Customs, Manners, and Prejudices of the People.—That they were neither voluminous, intricate, nor refined; but grounded on such Principles of natural Justice and Equity, as were open to the plainest Understanding, and on this Account peculiarly adapted to a People unaccustomed to refined Speculations. The Superintendants of the Country Courts were positively enjoined in all Matters of *Cash, Marriage, or Inheritance* (on which the Prejudices of the Natives are the strongest) to consult the *Molieries*, or *Pundits*, as the Parties concerned were *Mabomedans*, or *Hindoos*, and in their Decisions on such Points to abide by the Laws of the *Koran* or the *Sbaffer*.

Should any Person have the Curiosity to peruse these Regulations, he will find the Rules of Practice too few to be perfect. For as every particular Cause of Action, could not be foreseen, specifick Rules of Practice on all Occasions could not be devised. But in all such Cases where there was no specific Provision in the Regulations, the Custom of the Country, which has equal Force with the Common Law in *England*, supplied the Defect, and was a sure and safe Directory.

It does not appear from the Experience of some Years, that these Regulations have been found to be fundamentally erroneous, impolitick, or improper. They have since been revised by the Committee of the House of Commons, and appear printed in their Reports.

In the latter End of the Year 1773, the President and Council thought proper to change the System which had been established for the Collection of the Revenues; and some Variation of Course took Place, in the Administration of Justice. The Supervisors formerly appointed to each District were recalled, and a certain Number of Districts were joined together in one grand Division, which was put under the Charge of a Provincial Council, consisting of a President and four Members taken from the Servants of the Company. The Powers formerly vested in the Supervisors were now transferred to them; they were equally a

* The Word *Molierie* means a Priest or Doctor of the *Mabomedan* Law.

* *Pundit*, amongst the *Hindoos*, the same nearly as *Molierie* with the *Mabomedans*. A Priest, or Person skilled in the *Sbaffer*, a Book which contains the religious Ordinances of the *Hindoos*.

Court of Justice, and a Board of Revenue. When acting in the former Capacity, they were to proceed by the Regulations which had been drawn up for their Predecessors. All Matters, which came before this Council, were ordered to be determined by a Majority of Votes; and their Consultations or Proceedings were regularly recorded, and Copies of them, signed by those Members who were present when they were held, were constantly transmitted to the Superior Council of *Fort William*.

As it was foreseen, that the Business of the Collections would necessarily engage in great Measure the Attention of these Councils, the four junior Members were authorized to sit by Rotation as Judges in the Country Courts of *Adaulut*, which were continued as before, and formed a Part of the general Establishment of the Provincial Councils. The President of the Provincial Council was empowered to refer any Complaints or Suits to the Member presiding in the Court of *Adaulut*; and the Decrees of that Member in his judicial Capacity were subject to be revised, altered, and rescinded by the Council at large.

The Provincial Councils seldom took Cognizance of Causes of Property, or Suits of mere *meum and tuum*, in the first Instance; in this Respect they had a Discretion. Where the Complaints were originally instituted before them, or where the Cause of Action was of Importance, they sometimes took Cognizance of them, or else they referred them to the superintending Member of the *Adaulut*.

The whole Number of Provincial Councils throughout the Country was six; of which one was fixed at *Patna* for the Province of *Babar*.

Such was the judicial System which prevailed, when the Judges arrived in *Bengal*; and the Form of itself remains. This Detail comprehends such Explanations only, as immediately relate to the Subject proposed for Discussion, and is sufficient to enable the Reader to understand the Merits of what follows.

It remains to trace the Origin and Grounds of the Proceedings of the Supreme Court of Judicature in this remarkable Cause, which is known in *Bengal* by the Name of *the Patna Cause*.

Shabbaz Beg Khan, a Native of *Cabool*, a Province situated on the Borders of *Persia*, some Years antecedent to this Period came into *Bengal* to seek his Fortune. The Foundation of his future Opulence and Honours must have been laid in his own personal Merit, as he appears to have had no Friends upon his Arrival, nor Recommendations to any of the principal People in the Country. It is well ascertained, that he was for some Years in the Service of Mr. *Watts*, a Member of the Council of *Calcutta*; that he afterwards entered into the *English* Army, and about the Time of *Meer Jaffer's* Accession to the *Subahship*, was promoted to the Command of a Body of Horse.

* *Adaulut*—Justice, or Court of Justice. This Term must be well understood in *England*.

Narrative of Proceedings

His Riches increased with his Preferment; and he found Means at length to procure from the Great Mogul an *Uthanghwa* or Grant of Lands, Rent-free in the Province of *Babar*. He continued in the Army, till the War with *Cassim Ali Khan* was at an End, when he quitted his military Profession, and retired to *Patna*, where he resided in a private Capacity till his Death.

About the Time of his Retirement he married the Daughter of one *Shahja Khan*, a Man of low Rank. This Woman has been known since by the Name of *Nadara Begum*; but by this Marriage he never had Issue.

The Relations of *Shabbaz Beg Khan* continued to reside at *Cabool*; but his Brother named *Allam Beg* came to visit him at *Patna*, where he remained with him some Time, and upon his Return to his native Country either left, or sent his Son *Bebader Beg Khan*, to live with the old Man. *Bebader Beg* resided several Years in his Uncle's Family, and was in it at the Time of his Decease, which happened in November one Thousand seven Hundred and Seventy-six.

Nadara Begum the Widow was also living in the House when her Husband died; and agreeably to a general Practice which prevails amongst the Natives of keeping their most valuable Effects in the Apartments of their Women, (Plates usually guarded, and secured with more Care than the other Parts of the House) his Money, Jewels, &c. were deposited in the Apartments immediately occupied by her.

A very few Days after the Death of *Shabbaz Beg Khan*, a Dispute arose regarding the Inheritance of his Property between *Bebader Beg*, on one Part, and *Nadara Begum* the Widow, on the other. This Dispute is the Origin of these Proceedings which are proposed for Discussion.

Bebader Beg was the Claimant, and he preferred his Suit against *Nadara Begum* in the Provincial Council at *Patna*; a simple, unornamented Narrative of the Proceedings of this Court extracted from the most authentic Materials follows; after which the fullest Explanation will be added to it.

STATE of the CASE

BEHADER BEG presented a Petition to the Provincial Council of *Patna*, which was read by them January the Second, one Thousand seven Hundred and Seventy-seven.

Uthanghwa as Grant under the Royal Seal. The Ward is 9-24.

This PETITION stated,

"That his deceased Uncle *Shabbaz Beg Khan* had sent for him from *Cadool*, had declared that he considered him as his Son, and had constituted him his Heir and Representative; that *Nadara Begum* his Widow was secreting and removing the Effects: He therefore prayed that proper Persons might be stationed to prevent the Removal of the Effects; and that the *Cawzee* might be directed to ascertain his Right, and acquaint the Council therewith."

The Resolution of the *Patna* Council upon this Petition was,

"That Directions be given to the *Cawzee* and other Law Officers, according to the above Petition, to take an Account of the Estates, and of all other Effects the Deceased was possessed of at the Time of his Death; to cause them to be collected together, and placed under the joint Charge of the Law Officers, *Be-bader Beg*, and a Person on the Part of the Widow, till a Division could take Place; that they do allot the Shares of each Claimant, strictly adhering to the *Mussulman* Law of Inheritance, and delivering in an Account of their Proceedings."

The Chief, or, as he was absent, the acting Chief, who superintends the Execution of the Orders of the Council, signified these Resolutions to the *Cawzee* and *Musties* of *Patna* by a *Perwannah*, or Precept, in the *Persian* Language, addressed to them, under his own Signature, and the Seal of the Provincial Council. This *Perwannah* directs the *Cawzee* and *Musties*,

"To collect the Effects, make an Inventory of them, and secure them; and then according to ascertained Facts, and legal Justice, to transmit to the Council a Report on this Cause under their Seals, specifying what Portion of the Property each of the Claimants was to receive according to the Law of the *Koran*." The *Cawzee* and *Musties* on Receipt of this Precept repaired to the House of *Shabbaz Beg Khan*, and through the Medium of a Relation, who had long lived in the Family, communicated their Instructions to the Widow, who refused at first to execute their Orders; but after several Messages she complied, though with much Reluctance.

The Widow *Nadara Begum*, unable to appear herself, appointed one *Cajab Zekriah* as her *Vakeel*, or Representative. Her own Nephew, and another Person in her Family, communicated her Nomination of this Man to the *Cawzee* and *Musties*. The Declaration of these two People was taken down in Writing, and

* A *Cawzee*, as he is more commonly called the *Qadi*, is a Magistrate of the first Character in *Mohammedan* Governments; his Office is attended on Festivals, the Ceremonies of Marriage, Burial, Circumcision, and other religious Functions, are performed by him or his Deputies.

* The *Musties* are Expounders of the Law, but in *Bengal* have from Usage the same Functions as the *Cawzee*.

Narrative of Proceedings

in Attestation of it, one of them procured the Seal of the Widow, which he affixed to these Papers in the Presence of the *Cawzee*, and others.

These Preliminaries being adjusted, the *Cawzee* and *Musties*, accompanied by *Bebader Beg*, the Claimant, and the Representative of the Widow, entered the different Apartments of the House, and took an Inventory of the Effects. The Widow was obliged to retire from the Apartments, where this Business was transacted. Two or three Copies of the Inventory were made, one by a Person on the Part of the *Cawzee* and *Musties*, and another by two Persons in the Employ of the *Begum*, agreeable to the Orders of her Representative *Cojab Zekeriab*. At Night the Effects were locked up in the Rooms, the Seal of the *Cawzee* was affixed to the Doors, and the Keys were deposited under the joint Seals of *Bebader Beg* and the *Begum*. Two or three Days elapsed before this Business was completed.

This Part of the Orders having been executed, the *Cawzee* and *Musties* proceeded to investigate the Rights of the two Parties, Claimants of the Effects; and having finished this, delivered a Report or Summary of their Investigation to the Council of *Patna*, upon whose Proceedings of the twentieth of January, one Thousand seven Hundred and Seventy-seven, it is recorded. This Report states the Claims of the two Parties: *Bebader Beg* grounds his Right on being the Nephew, and adopted Son of *Shabbaz Beg Khan*, and claims as legal Heir to all the Effects of his deceased Uncle.

The Widow grounds her Right on three *Persian Deeds*, a *Mobur Nama*, or Marriage Settlement; an *Heba Nama*, or Deed of Gift; and *Ekrar Aum*, or Deed of general Declaration; and in virtue of these three Papers she claims the Inheritance exclusively.

It contains the Examination into these Claims respectively, and concludes with the following Summary of the Whole:

"In this Case as the *Heba Nama*, or Deed of Gift, and *Ekrar Aum*, or Deed of general Declaration, are suspicious and invalid; as *Cojab Zekeriab* has himself rendered them invalid; as the *Ekrar Aum* is not of itself a Foundation of Property; as the *Mobur Nama*, or Marriage Settlement, has never been produced; and as *Cojab Zekeriab* asserts the Right of his Constituent on these three Deeds, as he has also given the Order of Succession in a dubious Manner, his Assertions are unworthy Belief. On the other Hand, as the State of Succession given by *Bebader Khan* is clear, excepting the *Ultumghaw*, which makes no Part of the inheritable Effects, nor can be included in a Marriage

^a *Ekrar Aum* means a general Declaration; here it is technically used as the Name of a Deed Declaratory, and there is no Word in *English*, perhaps, which corresponds with it; to prevent Confusion the same Terms will be invariably used.

"Portion, one-fourth Part of the Wealth, Houses, and Effects of *Shabbaz Beg Khan* deceased, let *Nadara Begum* his Widow take; and let the Remainder be given in Trust to *Bebader Beg*, whose Father is the *Sabeb Ferz* and *Asba*, and he himself the adopted Son of the Deceased."

This Report has the Seals of the *Cawzee* and *Musties* affixed.

The Representatives of both Parties, together with the Law Officers, were summoned before the *Patna* Provincial Council, when this Report was read over; some Questions were asked, no Reasons to set it aside were shewn, and the following Decree passed:

"That the Division of the Effects as pointed out by the *Mahomedan* Law Doctors shall be carried into Execution; that the *Ullumghaw*, according to Custom, be delivered over to the Charge of *Bebader Khan*, who is to allow the Widow "One fourth of the Produce for her Maintenance."

The *Cawzee* and *Musties* were the Persons ordered to carry this Decree into Execution. On the thirtieth of *January*, *Bebader Beg* represented to the Council, that the Widow *Nadara Begum* refused to deliver up the *Ullumghaw* *Sunnuds*, or Title Deeds of the Grant, and otherwise comply with the *Furwah* of the *Cawzee* and *Musties*; that she had absented herself from the House contrary to the *Musfulman* Custom, which reflected a Disgrace upon the Family; he therefore prayed she might be delivered up to his Care as Representative to the Heir, which is the usual Mode established in the Country. The Resolution passed upon this Petition is, that *Bebader Beg Khan's* Request be complied with, and that she be constrained to return to her House under his Protection, and deliver up the *Sunnuds*, and other Papers of the Estate.

On the twentieth of *March* following another Petition was presented by *Bebader Beg Khan*, stating that the *Cawzee* had not yet complied with the Orders of the Council, for putting him in Possession of the Proportion of the Effects of his Fa-

* *Sabeb Ferz* is a *Persian* Law Term, and means a Person whose Portion of Inheritance is specified in the *Koran*.

* *Asba* is also a *Persian* Law Term, and means a Person who has the Right of Inheritance, but whose Portion is not specified in the *Koran*; an *Asba* has no Claim upon an Estate, till the Persons who are the *Sabeb Ferz* have received their stipulated Proportions, and then the *Asba* gets his Proportion.

* *Sunnud* means Grant or Title Deed.

* A *Furwah*, which may be interpreted a judicial or religious Decree was also delivered in by the *Cawzee* and *Musties*, and is entered on the Proceedings of the Council of *Patna*; it quotes the Authorities on which the Sentence was made, and particularly specifies the Proportions as recited above, and that *Bebader Beg* is only to receive his share in Trust for his Father *Allum Beg* who was absent.

ther, nor given him up the original Papers of the *Ultumghow*, nor furnished him with a Schedule of the Proceedings. The Resolution upon which is, that the *Cowzee* be positively directed to comply immediately with the former Orders, and that he be reprimanded for having so long delayed carrying them into Execution.

On the third of *April* an Address was received by the Council from the *Cowzee*, in which he excuses himself for not having executed their Orders, attributing it to the Refractoriness of the *Begum*, who will not deliver up the Slaves: That he and the *Mustis* had repeatedly called for them, in Order to discover what Part of the Estate and Effects had been privately carried away from the House.

The Resolution upon this is,

“That a Guard of *Sepoys* be placed over the Widow, not to suffer any Person to have Intercourse with the Widow till the Slave Women be given up, which from the Opinion of the Head *Cowzee* is conformable to the *Mussulman Law*.”

Such was the Trial at *Patna* in the Suit of *Bebader Beg* against *Nadara Begum*. To avoid interrupting the Course of the Narrative, one Resolution of the Council of *Patna*, which immediately followed the Decree in this Cause, has been omitted, viz.

“That *Coja Zekeriab* and three others, against whom there was the strongest Suspicion of being concerned in forging the Deeds, exhibited as Proofs of the Widow's Right, should be apprehended, and confined for the present, till a Division of the Effects had been made; after which they were to be delivered over to the *Fougedarry* * Court to take their Trial.”

It appears also, that a Division of some Part of the Effects did actually take Place, at which *Coja Zekeriab* officiated on the Part of the *Begum*, &c. That *Bebader Beg* received Possession of Three-fourths of the Effects divided. The other fourth Part was set out for the *Begum*, but she never would receive it. The Period when this Division was made, is not well ascertained.

The preceding Narrative of Facts, in which the strictest Attention to Truth has been observed, will not, it is apprehended, impress the Reader with an unfavourable Opinion of the Process of the Country Courts of Justice, established in *Bengal*: And if uncommon Ingenuity had not been employed, to represent these Proceedings in the most unfavourable Point of View, and to prejudice the Characters of the Persons concerned in them, it would be sufficient to leave the Facts simple, and unornamented as they stand, to speak for themselves; without offering any other Explanations, than those which the Difference

* The Country Court of Criminal Jurisdiction.

of Customs in *Asia* and *Europe* indispensably require to make these Proceedings intelligible to an *English* Reader.

But there is also too much Reason to believe, that many Endeavours will be used to blacken and misrepresent the Whole of this Transaction by Publications in *Europe*; it becomes therefore necessary to canvass every Part of it separately; in Order to refute those Strictures which have been made upon it, without any just or solid Grounds, as well as to obviate any future Attempts of the same Kind. This Remark will account to the Reader for entering so minutely into many Particulars of this Trial, where from the Nature of the Subject little or no Explanation seems to be required.

The Provincial Council at *Patna* was the only Court of Justice, which had a Jurisdiction to try Civil Causes between the Natives residing in that City, and the only Court throughout the Country, in which *Babader Beg* could prefer his Claim. If he had even wished to have instituted a Suit in the Supreme Court of Judicature at *Fort-William* against *Nadara Begum*, she could have pleaded to the Jurisdiction of that Court, and have thereby defeated his Claim. His Application was made in Writing by Petition* in the usual and established Mode: It was not verified upon Oath, because the Custom of the Country, and the Practice of the Courts neither admit or require such a Confirmation from a Plaintiff suing for his Right.

The Provincial Council on his Petition first directed the Effects to be properly secured, and then with a prudent Caution, as there might be other Claimants to the Estate, ordered the Rights of the Petitioner to be ascertained. The Persons they invested with this double Commission, were the *Cowzes* and *Musties* of *Patna*.

It will be difficult to fix any Imputation on the *Patna* Council, either on Account of this Order, or for their Choice of the Persons they made to secure the disputed Effects. It was well known at the Time, and has since been proved, that *Shabbar Beg* died possessed of Property to a very considerable Amount: The *Cowzes* and *Musties* were certainly the properest Persons in every Point of View to secure it, being the very Officers who by the *Mahomedan* Law are constantly employed for this Purpose.

If the *Cowzes* and *Musties* were the properest Persons to collect and secure the Effects, they were equally so for the Purpose of ascertaining the Rights of *Behader Beg* and the Widow, which it evidently appeared must rest upon the *Mahomedan* Law, of which they were Doctors.

* The *Persian* Word is *Arzes*, which means a Petition or Address, and the Word implies, that it is made by an Inferior to a Superior.

It is an established Practice in the Country Courts of *Bengal*, to refer Causes to the Enquiry of *inferior Officers*, or *Delegates*; and where there is no Suspicion of Partiality or Corruption, a Decision is passed upon the Report which they deliver in, unless good Reasons be shewn for setting it aside. This Practice requires no Justification; but there is a peculiar Propriety in it, when admitted by a foreign Nation, which has acquired a Dominion in *Bengal*. It has Length of Time, and Precedent in Support of it; and Necessity strongly requires, that it should be continued. The Natives in their Applications for Redress, particularly in Causes where their Usages or Religion are concerned, frequently point out this Mode of Investigation, and request it may be adopted.

By the Regulation under which the Provincial Council acted, they were bound to refer the Point of Law to learned *Mahomedans*, and to give the Parties concerned the whole Advantage of this equitable Rule, it was equally necessary for them to refer the Facts also. There is no Need to expatiate on so simple a Position. A Question of Inheritance to Property of a large Amount, in which *Mahomedans* only were Parties, was to be decided. The Decision would probably depend on Deeds, or Writings of a technical Nature, in the *Persian* Language, the Validity of which would rest on Terms and Forms of *Mahomedan* Law. It cannot well be supposed, that any *Englishman* with the best Capacity, and most upright Intentions imaginable, could be sufficiently skilled in *Mahomedan* Jurisprudence to decide Matters depending on that Science without some Assistance from its ablest Professors. A Delegation of this Enquiry, therefore, to Persons versed in the *Mahomedan* Law, was as necessary as it was just.

The *Cawzee* and *Musties*, to whom the Reference by the *Patna* Council was made, had resided at *Patna* many Years with Credit and Reputation, nor had any Charge of Corruption, or Mal-practice been ever brought against them. At the very Time they were invested with this Commission, they were actually Officers of the Council, receiving Salaries from the Government; and their established Duty was, to advise the Council in all Points of *Mahomedan* Law; they were the only Persons in the whole City of *Patna*, qualified to judge of the Matter, and were in all Respects unexceptionable.

But the Power delegated to these People extended no further than to enquire into the Facts, and to declare the *Mahomedan* Law arising upon those Facts; the ultimate Decision still remained with the Council at *Patna*; they were not bound to abide by the Opinion of these *Mahomedan* Lawyers, if any solid Objections were made to it, or if it was liable to any Suspicion of Partiality; but could resume the Rights they had delegated, and transfer them to more honest, and able Assistants, as they might judge expedient.

The Terms in which the Order to the *Cawzee* and *Musties* is expressed, imply

the utmost Caution and Reserve; and demonstrate a particular Attention to prevent any Infringement of the Rights, or Violation of the Property of the Parties concerned.

The Object of this Order has been already mentioned; to secure the Property of the deceased *Shabbaz Beg*, and ascertain the legal Heirs, and the respective Portions of each. Let us see in what Manner the first Part of the Order was executed. The *Cawzee* and *Musties* repaired in Person to the House where all the Effects were deposited, they communicated the Orders they had received to the Widow, and desired her to appoint an Attorney, or Representative to attend on her Part. The Mode, in which she communicated her Nomination of a Relation of the Family to this important Charge, is the customary and established Method. Women in *Hindustan* of the least Rank or Character never appear in Publick. Whenever they have Claims to assert, or Rights to defend, it is constantly done through the Medium of an Agent; and they cannot even stand forth to declare the Agent. In the present Instance an uncommon Degree of Caution was adopted. A simple Declaration by any of her Family, by a Servant, or Slave in the Presence of others, might by the Custom of the Country have been accepted as sufficient; but here the Declaration of her own Nephew, and of another Person in her Confidence, was made in the Presence of her Friends and Adherents under the same Roof, where she herself resided. And even that Declaration was not admitted, till the Persons who made it had procured from the Widow her Seal in Confirmation of the Fact.

The *Cawzee* and *Musties*, after this well-judged Caution, proceeded to take an Inventory of the Effects. An exact List is made, and a Copy of this List taken by the Order of the *Begum's* Representative; and the Effects are secured with the most scrupulous Exactness under the Seals of all the Parties.

In what Manner the *Cawzee* and *Musties* proceeded in their judicial Investigation, must be known from their own Report: This is only a Summary of the Trial, and does not enter into a Detail of all the Proofs exhibited before them; they state merely what they conceive to be sufficient Grounds for establishing the Merits of the Cause. Instead of tracing it Paragraph by Paragraph, such Remarks shall be given, as arise from the Perusal of it, in a Manner best calculated to convey Information.

It is to be observed, that the Widow of a *Mahomedan* cannot by their Law inherit more than One-fourth of her deceased Husband's Effects. It is a clear, fixed, and undeniable Principle with all their Lawyers. The Custom prevailing amongst the *Mahomedans* in *Bengal*, which in some Cases varies from the Letter of the Law, is in this Instance strictly conformable to it.

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The Widow of *Shabbaz Beg* asserted by her Representative an exclusive Right to all his Effects; and the Grounds on which she made her Claim were three *Persian* Deeds, a *Mobur Nama*, an *Heba Nama*, and *Ekrar Aum*, which in *English* are, a Marriage Settlement, a Deed of Gift, and Deed of general Declaration.

The first Paper she never produced; the second and third were laid before the *Mahomedan* Judges: These then are only to be considered.

The Representative of the Plaintiff endeavoured to invalidate the *Heba Nama* or Deed of Gift by asserting it to be a Forgery; in Proof of which he produced some positive, and some circumstantial Evidence. It was incumbent on the Widow to shew, that it had been duly executed by *Shabbaz Beg Khan* in all the Forms of Law: And above all, that she had received along with the Deed, the Possession of those Effects, the Property whereof it was designed to convey to her; for it is a most positive Principle of the *Mahomedan* Law, that no Deed of Gift can be valid, unless clear Proof by the Testimony of credible Witnesses is exhibited, that Delivery of the Goods, Effects, or Property which it conveys, is made in due Form by the Donor to the Donee.

But no Proof on either of these Heads was offered; on the contrary, some unwary Admissions of *Cajab Zekeriab*, the Representative of the Defendant, tended strongly to confirm a Suspicion of Forgery, and that even he himself was principally concerned in it.

The *Ekrar Aum* or Deed of general Declaration was the next Paper; the same Want of Proof is observable with respect to this; and it is liable also to a Suspicion of being forged. But this is of the less Importance, as the Deed cannot of itself convey Property by the *Mussulman* Law: The Reason of which is, that a Deed of this Kind must shew the Grounds or Consideration upon which the Transfer of Property is made, which the Paper in Question does not; a simple Declaration not thus circumstanced, is wholly ineffectual and nugatory.

The Merits of these Deeds will be more particularly discussed in another Place: What has been said is sufficient to convey all the Information at present required.

The Plaintiff sued for nothing more than his Share of the Property due to him by Law: All the Proof he was bound to exhibit, was his Consanguinity to the Deceased; and this Point was clearly established to the Satisfaction of the *Mahomedan* Lawyers. It does indeed appear that he had some Intention of claiming exclusively of his Father, by setting up a Plea that he was the adopted Son of *Shabbaz Beg Khan* deceased; but as this Plea was not admitted, it is unnecessary to discuss the Question of his supposed Adoption.

These Observations arising out of the Report of the *Cowans* and *Mussies* will set the *Furreeb* or Decision they pronounced in a clear Point of View; and convince every Person, that peruses them with Attention and Impartiality, of the

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Justice and Legality of their Sentence. After declaring their Opinion that the *Heba Nama* or Deed of Gift and *Ekrar Aum* or Deed declaratory were forged; that moreover the *Ekrar Aum* or Deed declaratory is not of itself sufficient to convey Property; that both Deeds are wholly unestablished by Evidence; and that the Claim of the next of Kin is reasonable and well founded, they pronounce that, excepting the *Uluumbaw*, which is not inheritable Property, the Widow is entitled to no more, than what is by Law her Share, which is One-fourth of the Estate of her deceased Husband; and that the Plaintiff as Representative to his Father *Allum Beg* is to receive in Trust for him Three-fourths of the Estate.

The Nature of this Sentence may possibly surprize the Reader; throughout the Whole of these Proceedings the Person mentioned to be the Plaintiff is *Rebader Beg*, the Nephew of the Deceased; in the Sentence, the Name of *Allum Beg*, his Father, is introduced, his Right is established, and the Person who has stood forth as the Plaintiff, is to receive nothing, but as Representative of his Father who is absent, and in Trust for him.

This Point shall not be left unexplained; but it is necessary to premise one general Observation, which will equally apply to what has already been said, and to what follows; and though addressed to all who peruse these Sheets, merits particularly the Attention of the Professors of the *English* Law, who from studying a System, or rather a Mass of Laws, derived from the Constitution of *England*, or grown out of the Refinements of an enlightened commercial Nation, or perhaps inseparable from its particular Circumstances and Situation, may in some Measure be prejudiced against all other Systems founded on different Principles, and apparently less perfect in their Structure.

In *England* a rigid Adherence to Form is the Characteristic of all legal Proceedings; in *Bengal* the same Adherence to Form has never been required, and could not now be insisted upon without the utmost publick and private Inconvenience. The Knowledge of Forms constitutes a great Part of the Science of *English* Lawyers; and no Man, who is ignorant of them, can conduct a Suit in the Courts of Law in *England*. In *Bengal* every Man is his own Lawyer; he files his Bill of Complaint, pleads, replies, and rejoins, by the mere Light of his own Understanding. On this Account, great Indulgence on the Part of the Judges with respect to Forms is absolutely necessary, and always allowed. No Pleadings, as they are styled in the *English* Law, are rejected on Account of Informality of the Terms in which they are drawn. Indeed, they are scarce ever correct, or precise in this particular. In all Suits which come before them the substantial Justice of the Case is alone regarded.

It is a Part of the Duty of the *Cowans* or Magistrate, wherever it appears that a Person absent has a Right to any Thing in Dispute, to appoint an Attorney or

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Guardian in Behalf of that absent Person, to take Charge thereof, till an Opportunity offers of delivering it into his Possession. Where a Relation appears, he is deemed the properest Attorney or Trustee; but where there is no Relation on the Spot to assert, or defend, the Right of the Person absent, or receive his Property in Trust, the *Cowzee* or Magistrate himself takes the Charge of it. In *Bengal* there was, and even now in some Parts of the Country exists, a particular Office for securing the Effects of deceased Persons, during the Absence of the legal Representatives and Proprietors, till they appear: The *Cadi* by the Law of his Sect, and by the Practice of the Country, had this Option, either to keep himself the Effects of *Shabbazbeg* in Deposit for his Brother *Allum Beg*, who was absent, or appoint the Son of that Brother to receive them in Trust. He preferred the latter; with respect to the Right of *Allum Beg*, *Bebader Beg* in establishing the Grounds of his own Claim, his Consanguinity to the Deceased, proved of Course and in a still stronger Degree the Rights of his Father *Allum Beg*.

This Point being now sufficiently explained; it remains to follow the other Proceedings in this Suit. When this Report was laid before the Provincial Council of *Patna*, they summoned the Representatives of the Claimants, together with the *Cowzee* and *Musties*, and after reading the Report, and asking some Questions, pronounced a Decree, that *Bebader Beg* should receive in Trust Three-fourths of the Effects, and the Widow One-fourth of them, as well as of the Rents of the *Ultumghaw* Lands.

This Order has been censured with uncommon Severity. The *Cowzee* and *Musties* declare, that the *Ultumghaw* is not inheritable Property; yet by the Council of *Patna* it seems to be considered as Part of the inheritable Effects by directing a Division of it to be made in the same Manner, as of the other Property. On what Grounds, it has been asked, do the *Patna* Council pretend to be better instructed, than the *Mahomedan* Lawyers, whose Advice they conceived themselves bound to ask? If professedly ignorant of the *Mahomedan* Laws, why did they not wholly conform themselves to the Opinion of those who had been educated in them, and to whose Knowledge they had appealed for Information?

Such is the Nature of the Objections which have been made; but let us consider them. The *Cowzee* and *Musties* say, the *Ultumghaw* is not inheritable, and, as their *Petwah* explains, on this Principle, that it is a Matter of Royal Favour or Grace, and Property held under such a Title cannot be devised or inherited; their Opinion then excludes both Claimants.

But the Fact is, that in the Province of *Babar*, where *Ultumghaw* Lands are more in Number than in any Part of *Bengal*, these Grants are of late frequently alienated,

alienated, and transferred. The Custom of more modern Times has there superseded the strict Letter of the ancient *Mabomedan* Law; and the Lenity of the *English* Government has connived at a Practice favourable to its Subjects.

The Council of *Patna*, then, in their Decision went by the Law of Custom, and considered the *Ultumghaw* as inheritable Property; and as such, they thought it equitable to divide the Rents of it between the two Claimants in the Proportions pointed out by the *Mabomedan* Law, for the Division of alienable and discernable Property: The Grant itself, they directed to remain with *Bebader Beg*, pursuant to the general Custom in such Cases.

The Trial has now been conducted from the Institution of the Suit before the Council of *Patna*, to the Decision passed by them in it. The following Remarks relate to the Process of the Court in carrying their Judgment into Execution.

The Widow, before any Decision had been passed, left her House and retired to a large *Mausoleum*, where she had carried the *Ultumghaw* Grants. The Plaintiff by another Petition to the Council of *Patna* represented this Circumstance, urging that her Absence from her House was contrary to the Rules of domestic Economy and Decorum amongst the *Mabomedans*, and reflected a great Disgrace upon the Family; he prayed that, according to the established Usage of the Country, she might be given up to his Care as Representative to the Heir.

The Prayer of this Petition was complied with, though never enforced. To oblige the Widow to restore the *Ultumghaw* Grants, was necessary to the carrying their Decree into Effect, which would otherwise have been in this Respect nugatory; but it may perhaps appear extraordinary, that the *Patna* Council should also consent to *Bebader Beg's* Request to have the *Begum* put under his Care and Protection; this therefore requires Explanation.

Wherever the *Mabomedan* Religion prevails, and indeed throughout all the *East*, Women are considered as wholly subordinate, and inferior to Men. The Independence they enjoy in *Europe* is unknown in *Asia*; and if Lady *Mary Wortley Montague* has, in her elegant Letters from *Constantinople* painted the Lives of the Women there in their true Colours, she has described a Life of elegant Pleasure, which no Woman in *Hindustan* ever dreamt of.

Females in *Bengal* are shut up within the Walls of an *Haram* from the earliest Infancy; the Confinement is strict in Proportion to their Rank. Marriage makes little Alteration in their Situation; for they are in Fact transferred only from one Prison to another. Their Education totally disqualifies them from appearing in Publick; untaught to read, or write; unacquainted with what passes in the World, which they can only see through the narrow Lattices of a

Seraglio, if a Female were permitted to wander from the House, where she has been brought up, she would soon become a Victim to Dishonour, Misery, and Vice.

The Character and Reputation of their Women is the Point of Honour with the *Mabomedans*, on which they are most jealous. To enquire of a *Mussulman* after his Wife, Daughter, or Sister, is an Affront to him.

If a Father, Brother, or Son, should die and leave any Wives or Concubines behind them, it is an invariable Custom for the Representative of the Family, or nearest Relation to take them under his Charge and Protection. It is a Duty, and Obligation upon him.

These Circumstances being considered, *Behader Beg's* Request will not appear unreasonable. It is founded on the jealous Custom of the *Mabomedans*; the Widow had left her own House, and had retired to a *Mausoleum*, resorted to by religious *Mendicants* from all Quarters. The Object of his Petition was to redeem her from Infamy, and preserve the Honour of his Family, in which his own personal Reputation was involved.

The last Act of the Council of *Patna* now remains. Their Sentence was still unexecuted; the Plaintiff had not obtained the *Ultumghaw Sunnuds*, nor the Proportion of the Effects he was to receive in Trust; and this was the Subject of a Complaint against the *Cawzee*, which he also preferred by Way of Petition.

The *Cawzee* and *Musties* were the Persons who had been ordered to carry the Decree into Execution; and the *Patna* Council call upon them to assign the Reasons of these Delays, and add new Injunctions to their former Orders. The *Cawzee* replies, that his Inactivity had proceeded from the Refractoriness of the *Begum*, who had positively refused to deliver up the Slaves; and that they were the only Persons who could discover any Part of the Effects, which had been secreted or embezzled; and he accompanies this Answer with a *Futwab*, to shew that the Slaves are by the *Mabomedan* Law a Part of the inheritable Property.

Upon this the Council of *Patna* pass their final Orders, that a Guard of *Scapoy*s should be placed over the Widow, that no Person might have Intercourse with her, till the Slave Women should be given up.

This Order has been censured as cruel. It is certain, that in *Europe* another Method of enforcing Obedience to the Decree of a Court of Justice would have been adopted, but the Modes of Coercion are different in different Countries, and here they bear Relation to the Custom of the People where they prevail.

In *Bengal* and other *Eastern* Countries, where Compulsion over Women is necessary for the Purposes of obtaining Justice, it is customary to surround the Houses where they reside, to prevent any Ingress and Egress, and not suffer any

Food to be conveyed to the Party. And although such Orders may appear calculated to destroy the Life of the Person, over whom such Compulsion is requisite, yet in Fact they are never executed with such a Degree of Strictness and Severity as to endanger the Loss of Life; nor is there one Instance known where the Process has been attended with that Consequence.

So jealous are the *Mahomedans* of the Persons of their Women, that even in the Process of executive Justice, except in Cases of great Enormity, where Suspicion amounts almost to Proof, they do not admit their Apartments to be intruded into, or their Persons to be exposed to publick View; and it does not unfrequently happen, that the Course of Justice from these Prejudices is interrupted.

If a Comparison be made between this Mode of Proceeding and those practised by the Courts in *England*, it will not appear in an unfavourable Light. To punish a Debtor, whether Man or Woman, whom Misfortune alone has made subject to the Law, by shutting him up in a loathsome unwholesome Dungeon, with Felons, and other Criminals of every Denomination, is a Species of Coercion more cruel and severe, than any practised in this Country.

After all, the Consequences of an obstinate Resistance to the Course of Law are not to be imputed to the Law itself. Is Justice to be suspended, because a Person, who has become the Object of it, chuses to be refractory? To argue in the Affirmative would be to maintain the absurdest of Propositions.

But to return to the Case before us; there was no Attempt ever made upon the Person of *Nadara Begum*; the Plaintiff's Requisition was merely that her Slaves should be delivered up, after which such Part of them as she was by Law intitled to, would have been returned to her; and probably the Whole, as they were only wanted to give Information respecting the Embezzlement of the Effects. She was called upon to surrender Deeds, which she with-held contrary to Law, and Right. Her Obstinacy extorted Orders from the Provincial Council of *Patna*, the Inconvenience of which she might instantly have obviated by her Compliance; as it happened, the Orders were permitted to subsist in Force but for three Days.

With respect to the Commitment of *Zekriab* and the other Persons on a Supposition of Forgery, it will be admitted, that the *Patna* Council in passing this Order acted with Propriety, both as Magistrates and Citizens. To try the Persons suspected they had no Power.

Europeans have no criminal Jurisdiction in this Province. This remains with the Natives; and the *Nabob* is at the Head of the Department. He nominates all the Judges, confirms or sets aside their Judgements, and issues his Warrants for Execution.

The Narrative in the preceding Pages contains the Proceedings of the Provincial Council of *Patna* in a Cause, where *Mahomedans* only were Parties. These Proceedings gave Rise to a Suit in the Supreme Court of Judicature at *Fort William*, which is the Subject of the following Sheets.

In the civil Suit at *Patna* *Bebader Beg* was Plaintiff, and *Nadara Begum* Defendant; but at *Calcutta* their Situation was changed. *Nadara Begum* instituted a Suit in the Supreme Court of Judicature against *Bebader Beg*, the *Cawzee* or *Cadi*, and the two *Mufties*; the three latter were the *Mahomedan* Law Doctors, who had been appointed by the Council at *Patna* to investigate the Rights of the two Parties, report the Sentence of the Law, and carry the Decree into Execution.

The Governor-General and Supreme Council, conceiving the Rights of the Company to be concerned, ordered their Advocates and Attornies to undertake the Defence of the Suit; and the Council of *Patna* by their Authority gave Bail for the Appearance of the Defendants in the Sum of three Lacks of *Ruppes*, or thirty-six thousand Pounds Sterling, for which Sum they had been arrested under a special Order obtained from the Supreme Court for that Purpose.

It is not here intended to give a Detail of all the Evidence produced in the Course of this long and intricate Trial; but merely to exhibit such a Summary of it, as will convey a just Idea of the Nature of the Suit, and of the Defence made, of the Principle on which Judgment was pronounced in the Plaintiff's Favour, and the Grounds on which Damages to a very large Amount were awarded against the Defendants.

Nadara Begum's Complaint, to use the Language of the *English* Law, by which it was decided at *Calcutta*, contained five different Counts, *Battery*, *Imprisonment*, *Breaking the House*, *Turning her out of the House*, and *Taking and Carrying away her Goods*; and the Damages were laid at six Lacks of *Ruppes*, or seventy-two thousand Pounds Sterling.

This Complaint, it will be observed, supposes, that all the Property left by the *Begum's* Husband at his Decease had become her Property, that the *Cawzee* and *Mufties* in dispossessing her of it, and *Bebader Beg* in receiving it, had acted unjustifiably; and that all the Acts of *Bebader Beg* as Plaintiff in the Court of *Patna*, and those of the *Mahomedan* Doctors, as Officers of that Court, were so many Trespases.

Bebader Beg, the first Defendant, pleaded, that he was not subject to the Jurisdiction of the Supreme Court; but at the same Time both *Bebader Beg* and the other Defendants pleaded the general Issue of not guilty; on which Grounds, he for himself, and the other Defendants for themselves, gave in

two separate *Notices of Justification*, in order to shew the Authority by which they acted; a Mode of Defence, which the Nature of the Suit, in Compliance with the Rules of the Supreme Court, compelled them to adopt.

The Facts stated in the Justification of the *Cawzee* and *Musties* are summed up as follows:

"That prior to the late Act of Parliament the Government of this Country was vested in a President and Council, who established certain Councils in different Parts of the Country, which Councils were invested with a Power to administer Justice to the Natives in civil Causes; that a Council had been established at *Patna* with Authority to sit as a Court of Justice, to try Causes of Property, issue Process, give and enforce Judgment: That in these Councils or Courts it was usual to determine Causes between *Mahomedans* by the *Mussulman* Law; to enable them to do which, it was customary to refer such Causes to certain well known Officers of the *Mahomedan* Law, called *Cawzee* and *Musties*; that upon such Reference the *Cawzee* and *Musties* examined the Suit or Action, and having heard Evidence on both Sides, delivered in a Report, upon which the Council or Court used to pass Judgment, subject to an Appeal to the President and Council, and to no other; that it was further usual for the Court to commit any intermediate Process to the *Cawzee* and *Musties*, who used to execute it, in Pursuance of certain Precepts of the Council directed to them for that Purpose, called *Purwannabs*."

The Justification proceeds to state the Powers of the present Governor-General and Council, as given or confirmed by the late Act of Parliament; and "that they had continued to entrust the Administration of Justice in the Province of *Babar* to the said Council established there, and to suffer the *Cawzee* and *Musties* to exercise the Powers before described."

It then shews, of what Persons the Council consisted; "that the *Cawzee* and *Musties*, the Defendants, acted as such Officers at the Time the supposed Trespass was committed; sums up in brief the Transactions at *Patna*, and concludes with the usual Form that the Acts complained of were not wrongful Acts, but Acts done by the *Cawzee* and *Musties* in the Execution of their established Duty."

The Justification set forth by *Bebader Beg*, is drawn up in a similar Manner, alledging only what the Difference in his Situation from that of the other Defendants required, viz. that he had instituted a Suit before the Council at *Patna*, and in Consequence of a Judgment passed by them, had been put into, and taken Possession of, the Property in Litigation.

The Plea of the Defendant *Bebader Beg* to the Jurisdiction of the Court was over-ruled on Grounds, which will hereafter be shewn.

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To the Justification of the *Cawzee* and *Musties* many Objections were made by the Plaintiff's Advocate, all which, excepting one, which the Court deemed fatal, was over-ruled; it is necessary therefore to state that only.

The Notice of Justification asserts a Right in the Provincial Council of Patna alone, to try and determine Causes, in Consequence of an Authority delegated to them by the Governor-General and Council; and then proceeds to say, that they *used to refer* Causes, and in the present Instance *did refer* the Action or Suit to the *Cawzee* and *Musties*, who in Fact tried the Cause, and delivered in a Report to the Council, who thereupon passed Judgment.

The Judges of the Supreme Court were pleased to decide, that on the Face of the Notice itself, the Proceedings of the *Cawzee* and *Musties* were illegal, because they acted by the Authority of a Council, who possessed themselves only a delegated Authority, which they could not delegate to others, it being an established Maxim of the Law in *England* that *delegatus non potest delegare*.

To the Notice of Justification of the other Defendant, *Bebader Beg*, this Objection could not apply; but another was found equally fatal to it; that the Whole of the Trespasses mentioned in the several Counts were not covered by his Notice of Justification. The Supreme Court, by requiring the same Particularity and Exactness, in a Notice which the *English* Courts require in a Plea of Justification, exposed *Bebader Beg* to a Difficulty which the Skill of his Lawyers was unable to surmount. To meet the infinite Variety of Charges contained in the Plea, in full Form of legal Defence, he had Occasion for the Aid of some Persons more conversant in the technical Niceties of *Special Pleading*, than could be found in *India*. It was apprehended indeed, that by substituting Notices in the Room of *Special Pleas*, a Defendant was to be somewhat unfettered from the Restraints of Form, and having apprised the Plaintiff in general Terms of the Nature of that Defence, on which he means to rely, was thereupon to find himself at Liberty to make out in Evidence any Justification, which should substantially correspond with that, which by this previous Intimation he had prepared his Adversary to expect and combat. It might likewise have been imagined, that a Justification, evidently purporting to apply to the Whole of the Charges contained in the Plea, would not be required specially to enumerate and answer the several Parts of which that Whole consisted.—The Court, however, in this Instance, thought proper to adhere rigidly to Form, and to preclude *Bebader Beg* from all Benefit of a Defence, which did not, in their Apprehension, square with the strictest Rules of it.

Bebader Beg's Plea to the Jurisdiction of the Court being over-ruled, and the Notices of Justification given by him and the other Defendants being thus

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thus set aside, Judgment was given of Course in Favour of *Nadara Begum*. The Damages which the Court thought proper to assess upon this Occasion amounted to the same Sum for which the Defendants had been held to Bail.

The Grounds on which Damages to so large an Amount were awarded, are now to be explained.

The Council for *Nadara Begum* the Plaintiff stated, that her deceased Husband, *Shahbaz Beg Khan*, had settled upon her the Whole of his Estate, both real and personal, excepting a few Legacies, by two Deeds, one called an *Haba Nama* or Deed of Gift, and the other an *Ekrar Aum* or Deed Declaratory; and that when he died, *he left her in Possession of his whole Property*. This State of the Case, together with the Facts set forth in her Plaint, were by the Court deemed sufficiently proved; some Evidence was then heard as to the Value of the Effects, and the Value of those Effects, taken upon the largest Computation, combined with the very liberal Estimate of the supposed personal Injuries sustained by the *Begum*, ~~and~~ the Damages which the Court thought proper to adjudge to the Plaintiff, to the Amount of the above-mentioned Sum of three Lacks of *Sicca Rupees*, or thirty-six thousand Pounds Sterling.

The Defendants in Mitigation of Damages were permitted to enter into the Proof of the Facts contained in their Justification: This was declared by the Court to be a special Act of Indulgence. It does not however appear, that they were suffered to derive any Benefit from this Indulgence.

It would only embarrass the Reader to lay before him any further Particulars of this Trial at present. The preceding Abstract furnishes a few Points of great Importance, which merit much Attention.

The Sources, from which the Facts are drawn, are two Accounts of this Trial, one written by the Chief-Justice, and by him sent to the Governor-General and Council, and the other by the Company's Commissioner of Law-Suits, both which with the whole Evidence exhibited in the Course of the Trial, and with the Opinions of the Judges on many material Matters, stand recorded in the publick Consultations of the Supreme Council at *Fort-William*.

The first Question, which naturally arises from a Perusal of the preceding Summary, is

By what Right the Supreme Court assumed the Power of hearing and deciding a Cause, which had been already tried, and determined, in a Country Court of Justice?

For an Answer to this Question, we must turn to the Act of Parliament, and Charter of Justice, from which all the Power held by the Court, is derived.

The Act of Parliament takes Notice of the Existence of certain Country Courts of Justice established in the Provinces, and points out two Circumstances, which must concur, in order to give the Judges of the Supreme Court a Jurisdiction over Causes instituted against Inhabitants of the three Provinces above-mentioned. These Circumstances are, first, that the Suit be brought upon a Contract or Agreement in Writing, executed between the Parties suing, and in which it should have been agreed, that in Case of Dispute, the Matter should be heard and determined in the Supreme Court of Judicature at *Fort-William*. Secondly, that the Cause of Action should exceed five hundred current *Rupees*.

Now (without at present entering into the Question, whether *Behader Beg* and *Nadara Begum* were such Persons between whom any Suit whatever could, under the Authority of the Act of Parliament, be instituted in the Supreme Court) it was never pretended, that *Behader Beg* and *Nadara Begum* had entered into any such Agreement, as the Act requires; the Justification of the former, as well as the Plaintiff, clearly pointed out to the Court, that the true Cause of Action had been decided by the Provincial Council, or Country Court of Justice, at *Patna*. Of this they could not be ignorant, and it is not easy to conceive, on what Grounds their Proceedings are to be justified, in hearing, and determining, a Suit which is not contained within the Limitations laid down in the Charter of Justice, after a Judgment in it had been pronounced in a Country Court.

But it is not simply in this Point of View, in which the Question is to be considered; it does not merely relate to *Nadara Begum* and *Behader Beg*. It must be asked, where is any Authority given to the Supreme Court to try the *Cawzee* and *Musties*, Officers of a Country Court of Justice, as Trespassers by the Law of *England*?

Neither the Act of Parliament, or Letters Patent of his Majesty, as far as the Writer has been able to discover, invests the Court with any Authority or Controul over the Officers of the Country Courts of Justice. The Clause of the Charter above referred to, is worded with such Caution, that it leaves the Supreme Court no Grounds or Pretence for exercising this Authority. If the Cause of Action is such as the Judges of the Supreme Court may legally try, it is then expressly ordered, that the Writ or Precept shall be directed, not to the Judges or Superintendants of the Country Courts, which would have been the Case, if the Supreme Court had a Controul over them, but to the Party or Parties suing in them, commanding them to stop or surcease Proceedings. On the contrary, the same Charter mentions in clear unequivocal

cal Terms the Courts, which shall be subject to the Controul of the Supreme Court of Judicature at *Fort-William*, viz. the Court of Requests, and the Court of Quarter-Sessions.

But the Want of Precision in the Charter of Justice, and the Ingenuity of its Interpreters, supply the Deficiency in this Clause, and enable the Judges of the Supreme Court to exercise a Power, which it does not appear to have been the Intention of the Legislature to confer, or of his Majesty to grant.

This is done by calling the Officers of the Country Courts of Justice *British* Subjects, in which Capacity they are amenable to the Jurisdiction of the Supreme Court.

By this Mode of Construction the Functions of a Magistrate, sitting and performing Duties indispensable to the Existence and Welfare of the Community, become Trespasses against the Laws of *England*; and the Process of a Country Court, where any Species of Compulsion is used, can be translated into an Injury and Offence, to be tried upon this or that Statute, or by the Custom of the Country, as the Court shall determine, and punishable by Damages, by Fine, or Imprisonment, at their Discretion.

Bengal is the only Kingdom in the World which exhibits a System of this Kind; where the judicial Establishments are divided, and militate against each other; and where the Performance of a publick Duty, which originates in the Authority of a Magistrate, ends in the private Responsibility of an Individual.

It is by no Means meant to assert, that every Person acting as Superintendant, or as an Officer in a Country Court of Justice, is not to be tried in the Supreme Court of Judicature. But a Distinction ought to be made in Justice, as it subsists in Fact, between Acts performed under the Authority of a Court of Judicature by one of its Officers, and conformable to the Practice of the Court, and the same Acts done by an Individual unconnected with any Court. If the compulsory Process of a Country Court of Justice may be turned into Actions of Assault, Battery, &c. and the Person exercising it be punishable accordingly, the Distinction, so just in itself, is at once confounded. Neither is it sufficient to say, that a Person acting as a Civil Magistrate, who is sued in the Court, may obtain a Verdict in his Favour by proving the Legality of his Actions; for Reasons will be hereafter given, to shew the Difficulty, if not Impossibility of doing this: In the mean Time it may be remarked, that the Trouble, Vexation, and Delay, of a Law-Suit, and the Interruption given by it to publick Duties, as well as private Business, are Grievances which no Man acting as a Magistrate on a general Principle ought to be lightly exposed to.

If this Distinction be admitted, it will possibly be then asked, who is to punish any Abuses which may be committed by the Officers of the Country Courts of Justice, under the Colour of their established Authority? The answer is obvious. Faults or Crimes in the inferior Officers may be punished by the Court to which those Officers belong. If the Members of the Court should themselves be guilty of Offences in their judicial Character, the Supreme Council can punish the Offenders, by Dismissal from their Offices, and by Suspension from the Company's Service, in the first Instance; and finally they may order a Criminal Prosecution against the Person accused, in the Supreme Court. This Power they are invested with, and they can adapt the Punishment to the Degree of the Offence. The Governor-General and Council, who are also a Court of Appeal, can rescind any erroneous Judgments of the inferior Courts, and the Party aggrieved by such Judgment may obtain his Right with little Trouble or Expence. Thus in every Point of View, there exists an Authority competent both to remedy Errors in Judgment, and to punish Abuse of Power.

In the Hands of the Governor-General and Council this Controul is proper; they are the Persons to determine whether the Rules of Conduct laid down for the Officers of the Country Courts have been adhered to, and whether the Proceedings are conformable to Justice? To lodge this Controul with the Supreme Court is improper, both on Account of the Difference in the Institutions of the Supreme Court, and Country Courts; as well as on account of the Difference which subsists in their respective Forms of Process, which in many Cases cannot be reconciled. The strict Proof required in an *English* Court of Law too often excludes the Possibility of a Justification or Defence in this Country. Facts, even of the most publick Notoriety, have been occasionally found incapable of Proof according to *English* Rules of Evidence in the Supreme Court. The Volumes of *English* Law which have been brought amongst us, furnish no very clear Lights upon the Subject of Evidence in general, and scarce any Rules which can be strictly accommodated to the Situation of this Country. It is often impossible to divine, what Points will be required in Proof by the Court, or to guard against every Objection which may be made by an ingenious Advocate, as to the Admissibility of this or that Species of Evidence, a Circumstance which leaves an unbounded Scope to the Judges for the Exercise of their own Discretion. An Informality or Error in a Justification is held a sufficient Ground for rejecting such Justification entirely, and the Party who had meant to avail himself of it, is on Account of this Slip in the Outset of his Defence, precluded from all further Opportunity of exhibiting the true Merits of his Case to the Court.

It

It little avails either the Superintendant of a Country Court to have adjudged, or a Suitor to have prosecuted a just Claim, according to the strictest Rules of Mahomedan or Gentoo Law, if he cannot also shew to the Supreme Court, that he has done so, by a technical Series of legal Allegations, framed upon Principles, and expressed in a Form of Language which the *English* Courts of Law have recognized and adopted. A competent Skill in that Science, which the *English* Lawyers have, for some Reason or other, agreed to distinguish by the Name of "*Special Pleading*" will be found at last full as necessary to him, as a perfect Knowledge of the *Koran*, or the *Shanferit*.—An Ignorance of this mysterious Science, together with the Difficulty of satisfying the *Scrutiny* of *English* Evidence, has been fatal to the Defence of almost all the Officers of the Country Courts, against whom any Suits have been ever instituted—at least I may venture to say it has been so in nine Instances out of ten.

A Consideration of the Nature of the Defence set up by the Defendants, in this Cause, will evince the Truth of these Arguments: Before they approach to the Merits of the Cause, they are obliged to labour through a long Deduction of Facts, of which they themselves could know little, much less, that they were to be pleaded; but as it may naturally be expected, they failed in the Outset; before the Supreme Court they were considered in the Light of Individuals only, and the publick Proceedings, and Records of their Investigation at *Patna*, were on this Account received in Evidence against them, but could not, as the Chief-Justice declared, be admitted in their Favour; the Embarrassment arising from this is insuperable; for it is impossible to produce *viva voce* Evidence of every Circumstance that passes during a Trial.

An Argument has been urged in *Bengal* in Vindication of the Conduct of the Judges, in taking Cognizance of this Cause, which must not be overlooked. That they did not exercise any Controul over the Superintendants of the Country Courts, whose Duty it was to have tried the Cause themselves, but over Individuals, who acted without any legal Authority.

The Point, on which this Argument turns, must be decided by a Reference to the Constitution of the *Patna* Council, and to the established Practice of that Court, of which an Explanation has been given in the preceding Pages: How far this is conformable to Fact may be known by the Trial in the Supreme Court, where it was proved, that the *Cauzees* and *Musfies* were Officers of the *Patna* Council, acting officially by their Directions; that in this Cause they acted by their Direction, and that it was usual to refer Causes to their Inquiry, and to decide upon their Reports. The mere Trial of the Officers may be deemed

a personal Jurisdiction only, but in pronouncing the Process of the Court to be illegal, and reversing its Decree, they exert a Controul over the Thing, or the Court itself.

This is not the only Case in which the Officers of the Country Courts of Justice have been tried in the Supreme Court: Innumerable Instances of such Trials might be produced, where the Process of a Country Court has been made the Grounds of the Suit, and not Bribery, Corruption, or Peculation, as might be conceived. The Nature of the Defence is similar in almost all the Cases, as the same preliminary Points are to be established, which must be done by a Notice of Justification.

Notwithstanding the Frequency of such Trials, the Advocates of the Company, who are generally instructed to undertake the Defence, are still at a Loss how to justify their Clients. In the Suits preceding this, it had been the Practice of the Council at the Bar to admit certain Points, such as the Establishment of the Supreme Council, the Authority of the Country Court, &c. which were commonly supposed to be Acts of Notoriety, but in this Action no Admissions whatever were made, and the Defendants were bound to prove all the Facts they alleged, however notorious such Facts might be.

This being unexpected, they were not prepared for it, and accordingly were foiled: to prove the Establishment of the Council of *Panna*, by whose Authority they acted, a Fact which is known to every Individual in *Bengal*; they produced the Books in which the Proceedings of the Council of *Fort-William* are entered, by which alone the Appointment could be proved; but these Books were rejected, as being Copies only of the original Proceedings.

The Consequences arising from this Power so exercised, shall be summed up in another Place.

The next Point for Consideration is, *The Rejection of Behader Beg's Plea to the Jurisdiction of the Court.*

The Point, on which this Question turned, was whether *Behader Beg* was or was not *Aumil* of two Districts, *Gbedoor* and *Amuloo*, in the Province of *Babar*, and employed in collecting the Revenues of these Places; and whether he was not thereby in the Service of the United Company, and under the Terms of the Act of Parliament an Object of the Jurisdiction of the Supreme Court.

Statute 13, Geo. III. (63. Sect. 14.) authorises the Supreme Court "to entertain, hear, and determine, any Suits or Actions whatsoever against any of his Majesty's Subjects in *Bengal*, *Babar* and *Orissa*, and any Suit, Action, or Complaint, against any Person who shall at the Time when any Debt, or Cause of Action or Complaint, shall have arisen, have been employed by, or shall then have been, directly, or indirectly, in the Service of the said United Company, or of any of his Majesty's Subjects."

This

This State of the Question involves two Points; one of a particular Nature, which respects *Behader Beg*; a second of a general Nature, whether a Farmer of the Revenues is a *British* Subject. To understand it, it is necessary to give an Abstract of the Evidence upon it.

On the Part of the Plaintiff three Witnesses only were produced, her Nephew, another Native, and a Gentleman in the Company's Service, and a Member of the Council of Patna, Mr. Young.

The former declared,

That *Behader Beg* held the Place of *Fogedar* of *Gbedoor* under the Company, that he collected the Revenues, and that he once saw him pay the Revenue which he collected to the Company's Treasurer; that he had heard him give Orders to his Deputy about the Collections, but that he never saw either *Behader Beg* or his Deputy make the Collections; that he (i. e.) *Behader Beg* was not at any Time Security for any Revenue.

The second swears,

Behader Beg succeeded his Father as *Wadadar* of *Gbedoor*, and appointed a Deputy who collected the Revenue; that he the Witness did not go into the District, but heard it from reputable People.

On the Evidence of these two People as it stands, one common Remark may be made, that it is difficult to distinguish in it such Parts as are founded on Hearsay, from what they speak of their certain Knowledge; and that their Evidence in general seems to go upon a supposed Notoriety of Facts. It is remarkable of the former, that he swears to a Negative on a general Question, in which he is afterwards contradicted by Mr. Young, who as Member of the Council of Patna was certainly qualified to determine, whether *Behader Beg* had any Concern with the Company as a Security in respect of any of the Districts over which that Council presided. He swears, that the two Districts named above were farmed to another Person; and that *Behader Beg* was Security for him; that he suspects, though for no particular Reason, that *Behader Beg* was the real Farmer; that a Security may employ the Power of Government under a general Order to aid the Farmer for whom he is bound.

Mr. Young's Suspicion, and his Account of the general Course of Business, coupled with the Testimony of another Witness, speaking of public Notoriety, in a District where he had never been, was considered as sufficient Proof that *Behader Beg* was really, though not nominally, the Farmer; and the Court upon the Evidence of these three Witnesses found him to be the Farmer or Per-

son collecting the Revenue, and therefore in the Service of the Company and subject to their Jurisdiction.

That *Bebader Beg* was the Farmer of the Revenues, that he made the Collections, that he had Authority so to do, are Facts which, if true, are in their Nature capable of positive Proof; yet on these Facts the Evidence appears to be very vague and inconclusive. If they were really notorious, all those Witnesses produced at the Trial, who were Inhabitants of *Patna*, might have proved them. Little Credit seems due to the Testimony of the Plaintiff's Nephew, which is so flatly contradicted by that of Mr. *Young*, in a Point where the latter could not be mistaken. If *Bebader Beg* really farmed any District of the Company, the Engagements which he entered into might, and according to the Court's own Rules, ought to have been produced, as the best possible Evidence on the Subject, and which, if produced, must have made an End of that Question.

But Mr. *Young*'s Deposition clearly proves he was not the Farmer of the two Districts, which it was asserted he rented, as he names the Man who held them in Farm from the Company; and admitting, for Argument's Sake, as a general Proposition that a Security may, under the Restrictions mentioned by Mr. *Young*, employ the Authority of Government in Aid of the Farmer, still it appears that sufficient Testimony is wanting, which, if true, might have been had, that *Bebader Beg* either as Farmer or Security actually made the Collections. The mere Suspicion of Mr. *Young* in such a Case can scarcely be deemed conclusive Evidence.

On this Occasion for the first Time the Question was agitated, whether a Farmer is subject to the Jurisdiction of the Supreme Court? The Judges gave separate Opinions upon it, the Substance of which is as follows:

The *Chief-Justice* gave it as his Opinion, that a Person authorized by Government to collect the Revenues, whether under the Name of a *Collector* who receives a Salary for his Trouble, or that of a *Farmer* who receives no Salary for his Trouble, is a Person who is employed by, or directly or indirectly in the Service of the Company, and therefore a Subject of the Jurisdiction of the Supreme Court. That if this were not the Case, by changing the Name of the Officer, and paying for his Trouble in a different Way, the salutary Provisions of the Act, intended to remedy Oppressions and Exactions in the Collections of the Revenues, would be evaded, and that the Oppressions and Extortions represented in *England* to have been committed by the Officers of the Collections, whether truly or falsely, were one principal Reason for the Establishment of the Supreme Court.

Sir *Robert Chambers*'s Opinion is in other Words, but nearly to the same Purport, but Mr. *Hyde* goes a little further, declaring it as his Opinion, that

that *Behader Beg* is both within the Words and the Intent of the Act of Parliament and Charter.

The Justness of the Reason on which these Opinions are founded, and the additional Strength they are supposed to derive from what the Chief-Justice declares to be the Intention of the Legislature, will be best decided by a Definition of the Terms of *Farmer*, and *Collector*, and the Nature of their respective Agreements.

A *Farmer* of the Revenues in *Bengal* is a Person who engages to pay a certain stipulated Sum to the Government, as the Rent or Revenues of a District; beyond this Sum there is no Claim upon him; he is entitled to all Profits he can make by his Industry in promoting Cultivation; for all Losses arising from Neglect or Mischance he is responsible.

A *Collector* is a Person who by Virtue of a Commission collects the Revenues of a District; he is answerable only for the Amount he actually receives; has no Concern in Profits or Losses, and as a Reward for his Trouble receives a stipulated Salary or Allowance.

From this it will be observed, that there is a fundamental Difference between a *Farmer* and *Collector*, which may be still further elucidated.

The Relation in which a *Farmer* stands to Government, is that of a *Contractor*; between him and the Company reciprocal Engagements are executed, in which the *Farmer* is one of the contracting Parties; and whilst he performs the Stipulations in his Contract, it cannot be set aside. A *Collector* of the Revenues acts merely by Commission, as the Servant of his Employer, and may have his Commission determined and himself dismissed at the Will of the Persons who employed him.

As to the Intention of the Legislature in passing the Act, as interpreted by the Court, if any conclusive Argument with respect to the Extent of the Jurisdiction of the Supreme Court can be drawn from it in the present Case, it appears to be opposite to that formed by the Chief-Justice: The Persons supposed to have committed these Oppressions and Extortions were the covenanted Servants of the Company, and their immediate Dependants, such as *Banyans* and *Sircars*; and those were probably the Persons meant under the Appellation of those *directly* or *indirectly* in the Employ of the Company, or *British* Subjects. But to suppose the Legislature meant to make a very numerous and most important Class of People, ignorant of our Language, Laws, and Manners, and from their Birth, Situation, and Inexperience, incapable of entertaining Ideas on these Matters, subject to the Jurisdiction of a Court of *English* Law, constituted upon Principles they never could conceive, and liable to be sued in that Court by Forms of Process and Pleading, they never heard of, for Actions which Usage

and Custom had sanctified amongst them, but which the Law of *England* might call Trespasses, seems to suppose a manifest Absurdity.

Although the Jurisdiction of the Court may not be defined in so precise a Manner, as to preclude all discretionary Distinction, yet, in considering different Parts of the Act of Parliament and Charter of Justice, the Intention of the Legislature seems to be sufficiently defined. The Ordering and Management of the territorial Revenues, in such Manner as the same might have been exercised by the President and Council of *Bengal* before the passing of the Act of Parliament, is by the Act itself expressly reserved and given to the Supreme Council*.

As the President and Council of *Bengal* before the passing of the Act unquestionably enjoyed an exclusive Jurisdiction in Revenue Matters, both in *rem* and in *personam*, a Right to such exclusive Jurisdiction now subsists under the Act of Parliament in the Supreme Council. It was an Authority of too high a Nature, and connected too intimately with the necessary Dependence of this Country upon the Government of *Great-Britain* to be committed to any other Hands than those to which the general Sovereignty over this Country was delegated. The Legislature never meant to invest the Gentlemen of the Gown with the Controul of Finance in these Provinces;—it is a Power necessarily resident in, and inseparable from the Supreme Government in every State;—the Power of the Sword is not more so.

The Grounds upon which *Bebader Beg's* Plea to the Jurisdiction of the Court was over-ruled, have been stated; the inconclusive Evidence of his being a Farmer, or Collector of the Revenues, has been likewise stated, and it is hoped that the preceding Arguments may be considered as establishing the negative of that Proposition which was laid down by the Bench at *Calcutta*, viz. that a Farmer is a Person in the Service of the Company, and therefore subject to the Jurisdiction of the Court.

There is a striking Singularity in this Decision with respect to *Bebader Beg*, which the following summary State of the Case may perhaps illustrate.

A young *Mahomedan* solicited by an Uncle leaves his native Country, and repairs to *Patna*, where he takes up his Residence, and after some Time, at the Instance of a Neighbour becomes his Surety for the Revenues of a District. His Uncle dying he has a Dispute with his Widow on the Inheritance to the Estate; he applies to the Courts of Justice of the Country, and a Sentence upon his Rights is passed; in Consequence of which, he obtains Possession, but in Trust only, of the Property of the Deceased; soon after he is summoned to appear before a strange Tribunal on the same Case, and finds himself involved in the

* Statute 13 Geo. III. C. 63. S. 7.

Intricacies of Laws he never heard of; astonished at this, he claims an Exemption from their Jurisdiction, but experiences to his Cost that his accidental Concern in the Revenues as Surety, and that only, has made him amenable to this Court; and although the subject Matter of the Suit against him had no Sort of Relation whatever to his Capacity of Surety, he is tried, cast, and imprisoned—for Life perhaps—in a loathsome Gaol.—Let the Facts speak for themselves. It is not hereby meant to throw the least Blame on the Makers of the late Act of Parliament, or to impute to them any Share in producing the Calamities above described.—The Comment was a Mischief which did not naturally grow out of the Act of Parliament, it was by no Means a probable or foreseen Fruit of it.

Consideration of the Principle on which the Judgment of the Court with respect to the Cawzee and Musties was founded, viz. "Delegatus non potest delegare."

That the Reader may not have the Trouble of referring to the preceding Pages, the Substance of the Objection to the Justification of the *Cawzee* and *Musties*, on which the Judgment was founded, shall be recapitulated.

The Notice of Justification asserts a Right in the Provincial Council at *Patna* only, to try and determine Causes in Consequence of an Authority delegated to them by the Governor-General and Council; and then proceeds to say, that they used to refer, and in the present Instance did refer, the Action or Suit to the *Cawzee* and *Musties*, who in Fact tried the Cause and delivered in a Report to the Council, who thereupon passed Judgment; that it appears therefore on the Face of the Notice, that their Proceedings were *illegal*, because possessing only a delegated Authority themselves they could not delegate it to others, it being an established Maxim of the Law of *England*, that *delegatus non potest delegare*.

If on the Face of the Notice of Justification the Proceedings of the *Cawzee* and *Musties* appeared in the Eyes of the Judges to be *illegal*, on the Face of the Objection itself their Decision must strike every Person as equally uncommon and extraordinary, and which ought to have been built upon the most substantial Grounds. The Practice of delegating Causes, in which Natives only were Parties to the Enquiry of others, had prevailed long before the Supreme Court appeared in *Bengal*; it is founded in Humanity, Policy, and Justice; it is conformable to the Spirit of the Regulations laid down for the Conduct of the Superintendants of the Country Courts of Justice, and the same absolute Necessity which first gave Rise to the Practice still subsists, as a Reason for its Continuance.

By what Right then do the Judges take upon themselves to pronounce a Practice they established in the Country Courts of Justice an illegal Mode of Proceeding?

As the Decision was made upon the Face of the Notice of Justification itself; it preceded all Proof, either as to the Practice of referring Causes, or the Length of Time such Practice had prevailed, or its general Propriety, or its Propriety as considered with respect to this particular Transaction; its Authority as founded upon positive Order or Usage, its Justice or Necessity never became the Subject of a Moment's Inquiry or Discussion, but catching at the Appearance of a Departure from the strictest Forms of *English* Law, they decide upon a narrow and peculiar Maxim of that Law, on the general Rights and Customs of *Mahomedans* in the midst of *Asia*.

Let us suppose a Moment, that in Answer to the Objection of the Advocate the Judges had argued in this Manner:

"The Law of *England* is the Perfection of Reason, and all its Maxims are highly respectable; but in applying them to Causes in which the Natives of this Country only are concerned it is proper to proceed with Caution, and to exercise that Discretion which his Majesty has by his Letters Patent left with us, in such Cases, with great Moderation. The Persons whom our Decisions will affect, are Professors of the Law of the *Koran*, an Object of Veneration amongst the Followers of *Mahomed*. We must be careful how we injure the religious Feelings of a zealous, and numerous Sect, on trivial or formal Objections. These People are accused of Actions of Trespass; they assert that these Actions were performed by them as Officers of a Court legally constituted, and in their Justification they appeal to the established Practice of that Court; they do not, it is true, sufficiently state the Authority on which this Practice is founded, but they may possibly be able to prove it on the most just and solid Grounds. Perhaps the Constitution of the Court, whose Officers they assert themselves to be, is imperfect. In framing Systems of Jurisprudence, Perfection is attained by Degrees. We know that in *Bengal* these Courts have been but lately constituted. Their Rules of Proceeding may not be so consistent and regular, as those which Experience may dictate in future, but they may nevertheless be just and equitable: The Justification of these People may on these Accounts be deficient in Point of Expression, but under such Circumstances, Justice requires that great Allowances should be made. It is fit therefore that we hear the Proofs they have to produce."

To such Reasoning as this few Objections would have been made: But it is not upon such an equitable Mode of Reasoning as this that the Defendants are obliged to rest their Case.

That

The common Principles of the *English* Law, respecting Persons acting in judicial or ministerial Capacities, when applied to the present Subject, furnish, it is submitted, a sufficient Protection to them.

That the Council of *Patna* had Jurisdiction in the Cause instituted by *Bebader Beg*, will not be denied; but it is contended that they executed their Jurisdiction in an irregular Manner, by delegating judicial Powers to others, when they themselves were only Delegates.—Without at present entering into the Question how far such a Doctrine is applicable to a Court constituted like that at *Patna*—and which, if it had not been adopted by three learned Judges, could hardly be supposed to have been seriously urged, even by an Advocate; it is sufficient here to say that the Sentence given, was the Sentence of the Council of *Patna*, and that the *Cawzees* and *Mufties* acted in Obedience to the Sentence of a Court, having competent Authority to give such Sentence: And it is clear that, by the Law of *England*, the Officer executing Process is not answerable for any Irregularity in the Magistrate whom he obeys. It is sufficient that the Magistrate, under whose Orders he acts, had Jurisdiction in the particular Instance, and the Magistrate alone is to answer for the Irregularity or Impropriety of his Conduct. To say that, in the present Instance, this Privilege ought not to be allowed the Officers, executing the Commands of the Council at *Patna*, because the *Cawzees* and *Mufties*, who executed the Process, were themselves the Referees, is an Insult upon those unhappy Men, and upon the Inhabitants of those Provinces, over whom this Country has assumed a Civil Jurisdiction. The *Cawzees* and the *Mufties* were heretofore the Judges of the Country.—The *East-India* Company have taken upon themselves the Administration of Civil Justice, at least have restrained the Country Judges from all Interference with Process, except under their Sanction. The Council at *Patna* were the Body from whence Civil Justice was alone to be obtained, and to which the Natives were required to apply for it.—A Suit, concerning the Right of Succession to the Effects of a deceased Native of that Country, is instituted before the Council of *Patna* by his Nephew, a Native, against his Wife, also a Native. The Council command the ordinary Officers of Justice in that Country to examine and report their Opinion of the Case: They do so, and nothing being shewn to the Council, which impeached that Opinion, they issued their Orders to put the Plaintiff in Possession, in Conformity to it. Can it be conceived, that three Judges, coming from *England* to administer Justice in *Bengal*, should first hold these *Mahomedan* Judges to be Servants of the Company, by acting under the Orders of the Council at *Patna* as Ministers of Justice, and, having deprived them of the Privileges of Judges, (which, if the Suit had been originally instituted before them, as such would have secured them from being considered as Trespassers) should then, from a Circumstance probably unknown to the *Cawzees* and *Mufties*, or if known, not likely to occur

occur to them as material, *viz.* That the Council of *Patna*, under whose Government they lived, were only the Delegates of the Governor and Council—and by the Application of a Rule arising out of that Circumstance (and which Rule must have been wholly unknown to them) proceed to take away from them that Privilege, which as Officers, executing the Process of their Superiors, they were intitled to? They certainly were, upon Principles of *English* Law, in a Situation to be answerable only for wilful Misbehaviour, which was not imputed to them, and common Justice required the Judges of *Bengal* to consider them in that Light.—All these Arguments apply equally, if not more strongly, in Favour of the Plaintiff, who was seeking Justice from those, from whom alone he could receive it.

In considering the Principle on which this Maxim of *delegatus, &c.* is grounded, *viz.* that a sovereign Power has not Confidence in the Person to whom this judicial Authority is delegated, it will not be found perhaps to be invariably adhered to.

To mention one Instance only; the Supreme Court in *Bengal*, on the Equity-Side, entrust the Examination of Evidence to their Examiner, or to Commissioners, and refer Accounts and other Points, on which the whole Merits of the Cause hinge, to a Master in *Chancery*, appointed by the Judges themselves, ~~not~~ by the King, on whose Report they pass Judgment, unless sufficient Grounds to set it aside be shewn. Is not this Proceeding similar to that before us, in Point of Expendiency, and grounded on somewhat of a similar Necessity? Two *Mahomedans* have a Dispute about an Inheritance; the Suit is preferred in the Court of the Council of *Patna*; they delegate the Investigation to the Officers of their own Court, Doctors in the *Mahomedan* Law, expressly appointed to assist them on such Occasions, and direct them to report upon it. The Decree was passed by the Council at *Patna*, conformably to their Opinion. If in this Comparison of the Case it should be said, that the Reference of the Fact itself makes a Distinction, it must be remembered, that to give the *Mussulmen* of this Country the full Advantage of being tried by their own Laws, it is absolutely necessary that the Fact as well as the Law should be referred to their own Doctors, as it requires in many Cases, particularly those of Inheritance, a Knowledge of the Law to try the Fact, and discover the Points material to the Cause, and upon which the Law turns; nor is it a Thing unknown in *English* Jurisprudence to receive Certificates of the Law of foreign Countries, to which this Reference may be reasonably assimilated.

The Governor-General and Council have had all the Particulars of this Trial at *Patna* before them. They were the Persons to determine whether the Proceedings in this Cause were regular or not, as they knew the Constitution and Practice

tice of these Courts: Yet they have never pronounced the Mode of Proceeding irregular; they have on the contrary testified their Approbation, both by ordering the Suit to be undertaken at the Expence of the Company, and by granting a Maintenance to those who have become Victims to the Decision. They are well aware, that both in the judicial and ministerial Departments of Government occasional Delegation of Power to enquire and certify, is indisputably necessary, and that if it were abolished, Millions of the People would be left in a State of Anarchy, without any Government at all.

The Court by this Decision have established a Precedent, which, if followed in future, may overturn effectually the *European* Government in *Asia*. And who will venture to pronounce it will not be followed? The Law of *England* has innumerable Maxims, which, however just and proper in the Kingdom where they prevail, will when applied to this Country be found equally improper, impolitic, and unjust. But if in all Cases these Maxims are to be rigorously adhered to; if Policy, Equity, or Necessity, are not sufficient Motives for relaxing them; if the established Practice of the ministerial or judicial Departments of Government, adapted as they are to the Prejudices, Opinions, Usages, or Religion of the Natives, are to be tried by them, and annulled; if contrary to them, the Government of the Company must fall, and the Discretion of an *English* Court founded on Maxims of the Laws of *England* must become the sole Rule of Civil Conduct for the Inhabitants of *Asia*.

Such are the Reflections that occur on perusing this remarkable Decision; which, by denying the Power under which the *Cawzee* and *Musties* acted, declared them to be Individuals proceeding without Authority, and their Proceedings of Course Trespasses. It was unexpected, because human Prudence could not foresee it; and they accordingly sunk under its Weight: Let Humanity weep over their Sufferings.

Considerations of the Grounds on which Damages to the Amount of three Lacks of Rupees, or thirty-five thousand Pounds Sterling, were decreed by the Court in Favour of Nadara Begum Plaintiff.

The Plaintiff's Council stated, that her deceased Husband *Shabbaz Beg Khan* during his Life-time made over to her his whole Estate both real and personal, excepting a few Legacies, by two Deeds, one called an *Heba Nama*, or Deed of Gift, another called an *Ekrar Aum*, or Deed Declaratory; and that he left her in Possession of his Estate at the Time of his Death; that she had been forcibly dispossessed of her Property by the Defendants, from whom she had sustained many personal Injuries.

The

The Court deemed this State of the Case sufficiently proved. Evidence was taken as to the Value of the Effects, which upon that Evidence amounted to about two hundred and forty thousand *Rupees*, to which an Addition of sixty thousand *Rupees* was made, as a Compensation for the Injuries she was supposed to have sustained; these Sums make up together the Amount of the Damages decreed by the Court.

From this short State of the Case it is evident, that the Claim of the *Begum* to the Estate of *Shabbaz Beg* rests upon the Validity of the two Deeds, and on Possession. Let us then try her Claim upon these Grounds by the *Mabomedan* Law, which in such Cases can be the only fair and equitable Standard. The Reader must for a Time suspend all his *English* Ideas, and transporting himself into *Asia*, suppose himself constituted a Judge to decide between two contending Parties of the *Mussulman* Religion.

On the general Nature of these Deeds, called an Heba Nama and Ekrar Aum, with an Explanation of such essential Circumstances as are necessary to render them valid.

An *Heba Nama* is accurately defined a Deed of Gift. To render it valid in the Eye of the *Mabomedan* Law, four Circumstances are essential; first, an Offer on the Part of the Donor; second, Acceptance by the Donee; third, the Delivery of Possession by the Donor of the Things given; fourth, the taking of Possession by the Donee. All which Acts must be performed in the Presence of Witnesses.

A Reference to the Laws of Inheritance amongst the *Mabomedans* will throw some further Light upon the Subject. These are so rigorous and strict, that a Man cannot devise more than one third Part of his Estate in Legacies; and lest he should favour one Heir in Preference to another, even these Legacies must be made to Strangers. All Deeds, which tend to exclude or cut off a Man's Heirs, are by the *Mussulman* Lawyers examined with uncommon Strictness and Severity: nor can a *Mabomedan* by any Deed, which is to take Effect after his Death, deprive his lawful Heirs of the Shares of his Estate pointed out by their Laws.

On this Principle Deeds of Gift must be considered as calculated to defeat the Intent of the Law, which is the Light in which the *Mabomedan* Lawyers view them, and on this Account receive them with great Jealousy, and never admit them as valid, unless the clearest Proof be exhibited of their having been duly executed in all the Forms required by their Law: Above all, a

* *Vide Appendix, No. 2, &c.*

Gift cannot acquire Validity, without actual Possession. And it is a clear and incontrovertible Point with them, that a Deed of Gift, unaccompanied by a Delivery and Acceptance of Possession in the Life-time of the Giver, becomes lapsed and void after his Death.

The Term *Ekrar Aum* means a general Declaration; but as applied to a written Instrument may be interpreted a Deed Declaratory, or Deed of general Declaration. What the real Uses and Purposes of this Kind of Writing may be, are not very clear; for a simple Declaration is no Foundation of Property, according to the *Mussulman* Law. By that Law Property can be acquired or transferred only on certain Considerations, and in certain Ways, such as by Will, Purchase, Inheritance, Gift, &c. A Claim under an *Ekrar Aum* upon these Principles has no Validity; because an *Ekrar Aum* does not shew the Grounds on which the Demand is made; and where a Person neglects to shew the Foundation of his Claim, and does not say, "This is mine by Purchase, by Gift, or by Inheritance," the *Mahomedan* Law rejects his Claim entirely upon a Presumption that he has no Right or Property to shew, otherwise he would set it forth.

Such is the general Nature of the two Deeds called *Haba Nama* and *Ekrar Aum*. The Writer might make a parade of the Books from which the Explanations have been drawn; but he rather chuses to rely upon the Authority of a Deposition made on this Occasion by one of the most learned *Molievies* in *Hindostan* named *Mahomed Cossim*.

From this general Discussion, let us turn to the two Deeds, on which the Widow asserted her Right to the whole Estate of her deceased Husband *Shabbaz Beg*. There was no Proof whatever produced in the Supreme Court of Judicature, that the four Circumstances essential to the Validity of the *Haba Nama* had taken Place; above all, the Plaintiff never attempted to prove, that she had received Possession of his Effects or Property before his Death; for it was notorious that he kept himself, as long as he lived, the Possession of his whole Estate, both real and personal, nor was the contrary ever attempted to be proved. The *Ekrar Aum* could give the Plaintiff no Right whatever, as it cannot convey Property; and though containing a Declaration by *Shabbaz Beg Khan*, that all his Estate is his Wife's Property, and held by him only in Trust for her; that Declaration is nugatory, as the Grounds or Consideration on which it is made are not shewn.

By the Principles of the *Mahomedan* Law the Claim of the Plaintiff *Nadara Begum*, founded on these two Deeds, falls to the Ground.

The Question will naturally be asked, what does the Court say upon these Points? Will it be believed in *England*, when it is answered, that these im-

portant Facts seem to have been totally overlooked by them in a Cause, where *Mahomedans* only were Parties, where their Rights only were concerned; and where the Property depending was so considerable. The Judges of the Supreme Court, although attended by two *Mollevius*, or Professors of the *Mahomedan* Law, receiving Salaries from the Court, and expressly appointed to assist them in such Cases, never asked them one Question, either as to the Nature, Intent, or Validity of these Deeds, or the Justice of the Claim founded on them.

On the Terms and Form of the two Deeds in Question, called Heba Nama and Ekrar Aum.

The Contradictions in different Clauses of the *Heba Nama* are so manifest, that there is little Occasion to point them out. *Shabbaz Beg Khan* first of all makes an absolute Grant of his whole Property either actual or future to his Wife, both of Things present, as well as of his Effects in *Cabool*, and his Property in the Hands of others; all which, he declares, is delivered into her Possession without the Participation of any other Person. He then stipulates, that his Brother his Nephew *Bebader Beg* and *Zekeriab* shall participate. He afterwards speaks of remaining Lands, though no Lands had been mentioned; and lastly gives the *Begum* the Remainder of his Estate only.

The *Ekrar Aum* does not, considered in itself, contain these Flaws and Contradictions. It is a Declaration by *Shabbaz Beg*, that his whole Property real and personal, including Effects of every Kind and Denomination, are the Right and Property of his Wife *Nadara Begum*, and that they are in his Hands only in Trust for her.

But if it be compared with the former Deed, the *Heba Nama*, it will then be found contradictory to it, and totally inconsistent with it.

In the first Place, though dated one Day after the *Heba Nama* only, it has no Reference to it; nor is it mentioned in the *Heba Nama*.

In the former Deed he has given away his whole Property by an absolute Grant to his Wife and several other Persons, which Grant to his Wife he declares had taken Effect: But by this Deed he resumes Possession of his Estate, and makes a new Disposition of it, declaring the Whole to be the Right of his Wife only, and annulling the prior Provisions in the *Heba Nama* in Favour of his Brother, *Bebader Beg*, and *Zekeriab*.

In the third Place, the Subjects on which these two Deeds operate are different: The *Heba Nama* extends to Goods in the Hands of others; and

For a Perusal of these two Deeds the Reader is referred to the APPENDIX, Numbers 3 and 4.

to Lands in the Country of Cabool, to both present Property and what may become *Shabbaz Beg's* Property in future. The *Ekrar Aum* goes to what is in his Possession only, and to established Debts.

It is evident that both these Deeds cannot be valid, for in their Terms and Operation they counteract each other. If the former be admitted as authentick, it positively excludes the latter; but if the *Ekrar Aum* be acknowledged as valid, the Conditions in the former are totally superseded.

The apparent Purposes of the *Ekrar Aum* are to make up for the many legal Defects in the *Heda Nama*; and it was thrown out during the Trial, that the two Deeds were in the Nature of a *Lease and Release*. But there are no good Grounds whatever for such an Idea; and it would be extraordinary indeed, if two *Persian* Deeds made in a remote Part of *Asia* should be found to resemble those two technical and fictitious Instruments. The *Heda Nama* and *Ekrar Aum* are both said to be executed by *Shabbaz Beg*; there are no reciprocal Covenants, and there is no Correspondence in the Description of the Premises mentioned in these Deeds.

The gross Solecism of the Declaration in the *Heda Nama*, that *Shabbaz Beg Khan* had delivered Seizin and Possession of Goods at *Cabool*, and in the Hands of other Persons to his Wife; the many other Contradictions and Absurdities it contains, which render the Conditions of it impossible to be fulfilled, condemn it altogether. Compare it with the *Ekrar Aum*, and the two Deeds effectually counteract and overset each other. They are then rendered null by the very Terms in which they are drawn: They have been already proved nugatory and illegal by the *Mahomedan* Law. Hitherto these Deeds have been considered as Instruments, actually executed by *Shabbaz Beg*; and no Idea has yet been suggested, that they were forged. Suspensions on this Head are built upon strong Grounds, both from the inconsistent and extraordinary Evidence respecting them which was produced by the Plaintiff, as well as by the more positive Testimony on the Part of the Defendants.

The principal Witness called to establish the Truth of these Deeds by the Plaintiff before the Supreme Court was her Dependant *Cajah Zekariab*, and four other *Mahomedans* named *Ghyrut Beg*, *Eunayet Ulla Beg*, *Mozam Beg*, and *Mahomed Awiez*. Their Account of them and of some Circumstances relating to them is as follows:

Shabbaz Beg is possessed of an *Ustunghaw* worth forty or fifty thousand *Rupers* a Year, of Houses and Property in *Patna* to a very considerable Amount, and is acquainted with all the *Mahomedans* of the first Rank in the City of *Patna*, where he lives; he designs to make over his Estate to his Wife by legal and technical Deeds. How does he proceed? He makes his

Persian Secretary copy a Deed of Gift from a Draft made and written by some Person never known, and it is dated the tenth of the *Persian* Month *Ramzaun*.

He then has another legal and technical Deed, called an *Ekrar Aum*, drawn out in the same doubtful and suspicious Manner; for neither the Person who drew it, or the Person who copied it, could ever be traced. He affixes his Seal, and executes these Deeds, when no-body is present; and one Day produces them, and desires *Zekeriab* to witness them for this special Reason, *that he was a Man of Learning, and his Attestation would therefore have Weight*. He next applies to four other Persons, who are not Men of Learning, to affix their Attestations to these Papers. Of these four Witnesses one can only make a Mark, and another writes so bad a Hand, that he is obliged to have the Assistance of *Zekeriab* to affix his Testimony, the third cannot write a Word, and the fourth one Word only.

In procuring these Attestations of the lowest People to these important Deeds, some Days are employed; and at the Time two of the Plaintiffs Witnesses attested the Deeds; a *Mussulman* of the Name of *Ishmael Beg* was present, a Friend of *Shabbaz Beg*; yet he is not asked to be a Witness, nor any other creditable Person in the City of *Patna*.

Such is the Story given by Plaintiff's Witnesses respecting these two Deeds; a Veil of Darkness is spread over it, through which not a Glimpse of Probability, or Ray of Truth is apparent. Two Deeds, which are designed to convey immense Property, are produced in Obscurity, and guarded with mysterious Silence. Is it asked, who made or drew them up? The Witnesses cannot tell: Is it asked, who wrote the *Ekrar Aum*? They are all ignorant. When did *Shabbaz Beg* affix his Seal to them? No body knows.

They are attested by *Cojab Zekeriab*, a Dependant of the Plaintiff, and four other Witnesses taken from the lowest People, equally ignorant, mean and illiterate. Yet *Shabbaz Beg*, as it was given in Evidence on the Part of the Plaintiff, lived at *Patna* with Magnificence; he had of Course some Friends of Character, Credit, or Fortune, whose Testimony would, if required, have been given, and if given would have had Weight. The very Reason for which *Shabbaz Beg Khan* is stated to have chosen *Zekeriab's* Attestation, ought to have precluded that of the other four Witnesses.

Deeds of this Nature and Importance are never made in *Hindostan* without many overt Acts and Solemnities. They are usually drawn up with the Advice and Assistance of some Professors of the *Mahomedan* Law; and they are executed in the Presence of creditable Witnesses, and the *Cauzes* or *Majis* ought to attend on the Occasion.

In the present Case, the Forms of Law and Prescription of Custom are alike neglected. It no-where appears, that any *Mahomedan* Lawyer assisted at the Drawing of these Deeds, or that any *Cawzee* or *Musti*, or Witnesses were present, when *Shabbaz Beg* affixed his Seal to them: The five Witnesses whose Names, Seals, or Marks appear to them, attested them at different Times.

Zekeriab declares himself a Man of Learning; as such he is desired to attest these Deeds; yet as such he is not consulted when they are drawn up, though living at that Time in the House with *Shabbaz Beg Khan*.

The Person so materially interested in these Deeds is *Nadera Begum* herself; in Virtue of them she is to acquire extensive Property. Yet she cannot by her Witnesses give any Account, when they were drawn, or by whom they were drawn. Is it then to be supposed, that *Shabbaz Beg Khan* kept her totally in Ignorance as to these Deeds? That he never gave her any Information concerning them? Is it probable, the Person whom *Shabbaz Beg* employed to draw them up, should have kept himself concealed from the *Begum*? Is it probable, that *Shabbaz Beg*, who from his Education or Profession cannot be deemed a Person of Knowledge or Learning, should have attempted to cut off his legal Heirs by two Deeds without consulting any Lawyer in drawing them up? Surely the Supposition in all these Cases is improbable and absurd: On the other Hand, if the *Begum* knew that they actually existed, her total Indifference and Want of Curiosity as to the Time and Manner, in which they were drawn, and as to the Person who drew them up, are wholly unaccountable.

In like Manner how can the Circumstances of *Shabbaz Beg's* Neglect to ask his Friend *Ismail Beg* to witness the Deeds be reconciled to Probability? He was a *Mussulman* of high Reputation, whose Testimony few would have disputed.

There is a Circumstance regarding this Man which must not be overlooked: He came from *Patna* to give Evidence in this Cause; the Company's Commissioner of Law-Suits had frequent Conversations with him on the Subject of it, the Substance of which he formed into a Deposition. He took him (with several other Witnesses) to swear to it before one of the Judges, when he applied for a Warrant against the Persons accused of being concerned in the Forgery. But neither his Oaths, nor those of the other Witnesses were taken. He died after the Trial was begun, before this Evidence could be taken; but a few Days before his Decease, by a Message to the Commissioner of Law-Suits expressed his Wishes to give his Evidence in the House where he lived, being from Illness unable to attend.

From the glaring Improbability of the Account given of these two Deeds by the Witnesses, who attested them, the Reader may perhaps conclude, that they,

they could not stand the Test of Examinations before the Supreme Court. The Judges however saw these Circumstances in a different Light.

The Grounds which four of them took, were so narrow and uncircumstantial, that it was impossible to refute or convict them of Perjury; for their Evidence was confined to one simple Point, "that Shahbaz Beg desired them to witness a Paper." But simple as this Point is, their Evidence upon it is not unsuspected; they affixed their Marks, Seals or Signatures, in the Presence of People who were dead, absent or unknown. One of them says, that after having attested the *Heba Nama*, he fell down in a Fit, which prevented his fixing his Seal to the *Ekrar Aam*. Yet he recovered soon enough to hear *Shahbaz Beg* desire *Zekeriab* to write over it what appears written. Another is guilty of a flat Contradiction, as in different Parts of his Evidence he says *he did* and *he did not* affix his Seal to a Paper after the Death of *Shahbaz Beg*.

A third, whose Deposition is attested by his Mark because he cannot write, remembers with Precision, at the Distance of two Years, the respective Dates of two Papers written in *Persian* and the exact Date on which he witnessed them.

And the fourth, who can write one Word only, remembers very little as to the Matter, pleading his military Profession as an Excuse for the Badness of his Memory.

Zekeriab alone takes a wider Compass; he does not confine himself to a general Account, but launches out into Particulars. As the whole Story of the Deeds depends upon his Evidence, as it appears the fullest Credit was given to it by the Court, let us see how it will stand the Test of a fair and candid Examination.

It appeared from his Evidence, that besides the above Deeds, there was in the Hands of *Zekeriab*, after *Shahbaz Beg's* Death, another *Heba Nama*, either an Original or a Copy, of that above recited, attested with the Seal of one *Syed Abmud Khan*. The Account which he himself gives of it, divested of the many extraordinary Circumstances which appears in this Part of his Evidence, is as follows:

That he found a foul Draft of the *Heba Nama*, which foul Draft had existed in the Life-time of *Shahbaz Beg*, in the Ink-stand of the *Persian* Secretary of *Shahbaz Beg Khan* five or six Days after his Decease; from which foul Draft a Copy was taken, and the Seals of these *Mahomedans Syed Abmud Khan, Mir Ghinet Beg, Enayet Ulla Beg*, as well as his own, were affixed to it.

The Reason which *Zekeriab* gave for having this Copy of the *Heba Nama* was that it was in his Mind to send it to *Cabool* to his Brother with a Letter, that the Effects of the Deceased *Khan* there, which now belonged to the Plaintiff, might not be dispersed; in another Part, says he sent the Copy to *Cabool*, to satisfy his

Rela-

Relations there; and again, assigns this Motive, that the Relations of the Family might know the Plaintiff was put in Possession of all.

This Action he kept concealed from the *Begum*, lest she should suspect he had Designs upon the Estate.

This whole Account, taken as it stands, is suspicious. *Zekriah* surreptitiously, for so we may pronounce it, obtains a Copy of a *soul Draft* of a Deed, by which the Widow of *Shabbaz Beg* was to receive his whole Property; to this in a secret Manner he procures private Persons to affix their Seals; he sends it to *Cabool*, induced by no other Motive than his Regard for the *Begum*, from whom he conceals the whole Transaction, lest she should suspect him of Designs upon the Estate.

Where was the Necessity for this secret, clandestine Transaction, if his Purposes had been fair? Why did he not as an honest Man, and her Friend and Relation, apply to her openly, and tell her that Propriety and Necessity equally called upon her, not only to inform the Relations of the Deceased of the Manner in which he had disposed of his Effects, but by proving and publishing the Deeds to establish them in the Face of the World? It seems he was afraid of her Suspicions; had he then done any Thing on a former Occasion to justify them? Or was the *Begum* herself of so very jealous a Disposition, as to suspect her Friend, her Confidant, and Adviser, when he proposed a Measure, that had her Interest only for its Object?

The Reasons which he assigns for sending this Paper to *Cabool* are various, inconsistent, and unsatisfactory. If he wanted to give his Friends and Relations simple Information on the Subject, his Letter alone, or a Copy of the Deed without any Authentication, would have done. If the Copy was to be used in a public Manner, he as a Lawyer must have known, what every Man in *Hindustan* who is no Lawyer can tell, that a Copy of any Deed or Instrument acquires Credit from the *Cowzeer* Seal only, not from those of mere Individuals.

But what Circumstance can be more extraordinary or suspicious, than his Applications to private Persons, two of whom could not read or write, to attest a Paper as a true Copy of an original Deed, which had not been copied from the Original, but from a *soul Draft* only, when by another Part of his Evidence it appears he had not then seen the Original since the Death of *Shabbaz Beg*, nor for some Time before; and two of these Persons to whom Application is made; and who cannot read or write, gave an unqualified Attestation to such Copy?

The whole Account is so improbable, that if it were not contradicted by positive Testimony, as it actually is, it would require more Faith to believe it, than what would have sufficed a few Centuries ago to remove a Mountain.

Few Parts of this Man's Evidence are divested of suspicious and contradictory Accounts. But it is his History of the two Deeds, and of the Circumstances relating to them, that are now under Consideration.

At the Conclusion of his Evidence he was questioned about certain Writings which appeared round the Seals upon the *Haba Nama* and *Ekrar Aum*. Both the Questions and Answers were taken down, and a Copy of them is given in the APPENDIX, No. 5. He endeavours to avoid the Subject; and finding he cannot do it, prevaricates and contradicts himself repeatedly in such Manner, as will not fail to convince every Reader that he was in this Instance grossly perjured.

The Observation of the Chief-Justice on this Part of his Evidence, as copied from his own Notes delivered to the Governor-General and Council, are as follows:

"On my asking him some Questions relating to certain Writings under the Seal of the attesting Witnesses, *Cajab Zekeriab*, who had been clear and consistent in his whole Story, who had challenged his Opposers, who had insisted to be heard, who had persisted in declaring the whole Circumstances, who defied his Adversaries at the Peril of his Life; for what Reason we cannot tell, became on a sudden to all Appearance equivocating and inconsistent. It can hardly be supposed that he did not know his own Writing; the Whole is apparently of the same Hand-writing; he admitted Part, then denied Part; and at last admitted the Whole. This could answer no Purpose whatsoever, for the Circumstance was immaterial, and the Transaction innocent. What he doubted of, all the subscribing Witnesses proved instantly without any Communication with him, that it was his Hand-writing, and that it was written at their respective Desires. However strange his Conduct was, as it was an immaterial Circumstance, and was proved to be a fair Transaction, as the Motive for doing, whether Embarrassment, Confusion, or any other Cause, as the rest of his Testimony is clear in itself, and delivered with an Air of Openness, Warmth, and Zeal, which can hardly ever accompany Fraud and Deceit, as he has been uniformly consistent in supporting the Claim of the Widow at all Risques, as he is supported by Evidence, by Probability, and Circumstances, which could not be forged, we cannot think it just on this Account to deny Credit to his Testimony."

Zekeriab, the open, the warm, the zealous, forgets at once his own Hand-writing, and is totally ignorant that the other Witnesses, who remember the Circumstance, had ever desired him to write for them. Suppose the Papers real and authentic, no Reason can be assigned for the Denial of his Hand-writing; imagine them to be forged, and many suggest themselves without Difficulty. In that Case the Circumstances would have been highly material to him. Whether the Story he

told was probable, and whether he was consistent in delivering it, sufficiently appears from the preceding Pages.

The Presumption and Boldness, with which the Natives of this Country support a Falsehood, are inconceivable to an *European*; and the Habit of Lying, which is not attended with Disgrace or Dishonour amongst themselves, pervades every Class from the highest to the lowest, and is conspicuous in their common Intercourse with *Europeans*. In the Supreme Court the Judges have had various Instances of this before them. On the other Hand the Voice of Truth and conscious Innocence are often found to be diffident, timid, and modest.

Here, notwithstanding the most palpable Contradictions, the Evidence of a Witness for the Plaintiff, on which the whole Cause depends, is received as good, and full Credit given to it. The Testimony of the Witnesses for the Defendants are examined with more Rigour and Strictness, and set aside upon Objections of much less Weight and Consideration.

There is Similarity in some Respects between the Evidence of this Man and that of *Kissen Juan Doss*, in the Trial of *Nundcomar*. He also, till the last Day of the Trial, delivered all his Evidence "with such Simplicity, and with such an Air of Candour and Truth, that full Assent was given to it." He also like *Zekeriab* faltered at the Close of his Evidence, but he did not prevaricate or contradict himself in so gross a Manner. But on the Trial of *Nundcomar* the Chief-Justice did not pronounce so positively on the Merit of *Kissen Juan Doss*; his Suspicions on the other Side are strongly pointed out, and left to the Consideration of the Jury, who made a sound Determination upon them.

Evidence on the Part of the Defendants with respect to the two Deeds.

The Evidence on the Part of the Plaintiff respecting these two Deeds having been briefly stated, it remains to give that on the Part of the Defendants.

There were five Witnesses brought to prove the Forgery. The first is *Niaz Ally*, the *Moonshi* or *Persian* Secretary of *Shabbaz Beg*, who swore that he copied the *Heba Nama* at the desire of *Zekeriab* a few Days after the Death of *Shabbaz Beg* from a Draft given by him, and that he also made a second Copy at his Desire, which he affirmed to be that produced in Court.

That the Attestation of *Mahomed Awiz*, which appears upon the Deeds, was affixed by himself in his Presence; that of *Zekeriab* and *Ghyrat Beg* in the House of *Shabbaz Beg* after his Death; the latter is by the Desire of *Zekeriab*. That observing this Paper, to which their Attestations were affixed to be the same he had before copied, he was alarmed, and mentioned it to *Zekeriab*, who told him a Copyist was not responsible.

There are four other Witnesses named, *Syed Abmud Khan*, *Enayet Ulla*, *Meer Kullel Ally*, and *Abdul Cader*, who swear that *Zekeriab* applied to them some short Time after the Death of *Shabbaz Beg Khan*, to attest an original *Heba Nama* or Deed of Gift, to which the Seal of *Shabbaz Beg* was affixed; telling them, that it had been made in *Shabbaz Beg's* Life-time.

The whole Story of the *Heba Nama* which had the Seal of *Syed Abmud Khan* to it, which has been given in the preceding Pages, stands contradicted by the positive Testimony of the four last Witnesses; these swear, the Deed produced had the Seal of *Shabbaz Beg* affixed to it; *Zekeriab* swears it had not. If their Evidence is admitted to be true, *Zekeriab* is proved not only to be guilty of Perjury, but of Forgery also.

With respect to *Neaz Ally*, who copied the *Heba Nama*, his Evidence is the most positive and pointed, and, as far as it relates to the Forgery, is clear. In another Part having mentioned that he saw the *Heba Nama* produced by *Zekeriab* before the *Cawaze* in Support of the Plaintiff's Claim, and being examined on this Point, his Evidence contains some Variations which the Court deemed sufficient to set it aside. This Point shall be hereafter explained.—*Vide APPENDIX, No. 6.*

The Circumstances of these two Deeds were stated in general on the Part of the Defendants, in a very different Light from what they were on the Part of the Plaintiff. They say, that some Days after the Death of *Shabbaz Beg*, *Zekeriab* made a Draft of an *Heba Nama*, from *Shabbaz Beg* to the Plaintiff, and having procured *Neaz Ally* to make a fair Copy of it, having affixed to it the Seal of *Shabbaz Beg*, as well as his own, and having procured the Attestations of *Ghyrut Beg* and others, carried it to *Syed Abmud Khan*, and other Inhabitants of *Patna*, soliciting them to attest it, swearing by the *Koran* it was a true Deed of Gift, and that he had been present when *Shabbaz Beg* executed it; that some refused to attest it, but *Syed Abmud Khan* and one or two more were prevailed upon to affix their Seals, cautiously writing at the same Time a Memorandum in *Persian*, that they “attested it on the Faith of Witnesses; that *Zekeriab*, sensible that this “Deed with these Memorandums would carry Suspicion with it, whenever produced, suppressed it, and employed *Neaz Ally* to make another Copy, to which “he affixed the Seal of *Shabbaz Beg*, and having authenticated it with his own “Seal and that of others, set it up as the original Deed of *Shabbaz Beg*.”

If the above Account be considered with the smallest Attention, it will afford a Clue not only for the dark and suspicious History of the Deeds, as given by the Plaintiff's Witnesses, but for the improbable Story given by *Zekeriab* of that *Heba Nama*, which had the Seal of *Syed Abmud Khan* to it, and which he said he sent

sent to Cabool. On no other Principle can these dark, suspicious Narratives be understood or accounted for.

These two Deeds have the Seal only of *Shabbaz Beg Khan* affixed to them, not his Signature; and as it was given in Evidence, that the Plaintiff was left in Possession of all her Husband's Effects, his Seal must be included, a Circumstance which would have enabled her to commit a Forgery, without Possibility of Detection, if she and her Friend *Zekeriab* had been more careful and particular in their Choice of Witnesses. The great Facility with which Seals are made and imitated in *Hindustan* is a Ground-work for numerous Acts of Forgery, and for this Reason a Deed having a Seal only is not admitted by the Natives in their judicial Decisions upon such Causes, except under the most clear and positive Testimony of reputable Witnesses, that it was affixed by the Person whose Name it bears.

To sum up what has been said upon this Subject:

The History of the Origin of these two Instruments is dark and suspicious: they are attested by five Witnesses, one of whom cannot be deemed wholly disinterested, as he appears to be not only a Confidant of the Plaintiff's, and her Adviser, but has also a Provision made for him by one of the Deeds; the other four attesting Witnesses are so low, mean, and illiterate, that no Man in his Senses would have requested their Attestations, who had, from his Rank or Connections, Opportunity of getting more creditable Testimonies. The two Deeds in their Terms are contradictory, absurd, and inconsistent. The Evidence of *Zekeriab*, on which the whole Fabric is erected, is evasive, suspicious, and contradictory, and stands refuted in one, and that a most material Point, by the concurrent Testimony of four Witnesses produced by the Defendants, which if received as true (and their Situations and evident Disinterestedness in the Cause are Arguments why it should) overturns not only the Credit of *Zekeriab*, but the whole Superstructure built upon it. To this must be added the Testimony of *Neaz Ally*, the Copyist of the *Heba Nama* produced in Court.

By the *Mahomedan* Laws the Instruments could have no Force or Effect, supposing even that *Shabbaz Khan* had actually executed them; those Laws, by which alone the Effect of these Instruments can be fairly ascertained, tell us that certain Circumstances ought to accompany or follow the Execution of such Instruments, to give them any operative Force, and which Circumstances were in this Instance wholly wanting. With respect to the *Heba Nama*, by the Evidence of *Zekeriab* himself, to constitute its Validity there must be a Delivery in some Way or other of the Thing given, "*during the Life-time of the Donor*"; and it never was proved any where, that any Kind of Delivery in any Way or Mode

what-

whatsoever of the Effects, which were designed to be made over to the Plaintiff by that Deed, had ever taken Place.

There seems to be in Fact a manifest Absurdity in considering these Deeds, or the Claim asserted under them, upon any other Principle, and in applying to them any other Test than that of the *Mahomedan* Law : The Judges of the Supreme Court of Judicature in *Bengal*, Men, we are to suppose, raised to that Station from their Knowledge, Merit, and enlightened Abilities, judged differently ; their Opinions have here been traced : They determined in Favour of the *Begum's* Claim under these Deeds ; the Writer of these Sheets with the same Evidence to guide his Judgment, with the Advantage of their Opinions to direct him, pronounces without Hesitation that in his Opinion the Deeds were forged, but whether they were or were not, they were, for the Reasons above assigned, defective and void as Conveyances of Property.

At the Trial the Plaintiff in establishing the Trespass, did not enter upon the Proof of these Papers as the Ground of her Claim, (although they were set forth by her Council in opening the Case,) but confined herself to the Title which Possession gave her by the Law of *England*. The Defendants had therefore to give their Proof in Support of the Forgery, before the Plaintiff produced her Witnesses as to the Authenticity of the Deeds ; and as the Trial lasted several Days, and the Witnesses on either Side were not examined apart, this Circumstance, supposing the Papers forged, gave the Plaintiff a great Advantage. Nay more—Part of the Evidence brought by the Defendants was explained to *Zekeriab* ; in his Deposition he mentions, quotes, and contradicts it.

As to the Plaintiff's Claim of Right by Possession, it is not easy to discriminate, how far it was admitted by the Court. But what does the Evidence on this Head amount to ? That the Widow of *Shabbaz Beg*, the Plaintiff in this Cause, was at his Death left in his House, where his Effects were ; there is no Evidence that he gave her Possession of them. A bare, naked, fortuitous Possession goes in Reason but a little Way towards establishing the Right of a Claimant.

In considering the Grounds on which Damages to so large an Amount were awarded by the Court, many other material Circumstances occur. *Zekeriab* in one Part of his Evidence swears, that when the *Cowzee* at *Patna* asked the Foundation of the Plaintiff's Claim, he went to the *Begum* to get Information from her ; she in Answer avowed the two Deeds so often mentioned, and another mentioned also in the former Part of these Sheets, the *Mobur Nama* or Marriage Settlement. She refused at that Time to give them up to him, but did some
Days

Days afterwards. Yet he swears, that he did not produce the original Deeds, but Copies only, to the *Cawzee* and *Mufties*.

Are we still to give Credit to *Zekeriab* on this Point, or admit the Testimony against him adduced by the Defendants, that these Deeds were produced before the *Cawzee* and *Mufties*? Entrusted by his Constituent, the *Begum*, with the Grounds of her Right, he refuses to produce them before the Persons constituted to decide upon her Claim: What a faithful and Trust-worthy Agent! Did he imagine the *Cawzee* and *Mufties* were to decide in Favour of the *Begum* on the Strength of unauthenticated Copies only? His Notions it must be confessed are singular.

The Subject is too serious to admit of Ridicule: He either did produce the Deeds as the Witnesses on the Part of the Defendants say, or as he swears, he did not. If he did not, his Evidence fully proves (what requires no Proof) the Propriety of the Decision pronounced by the *Cawzee* and *Mufties*, on the Rights of the *Begum*, who could not consistent with Justice or Equity decide Property in Favour of a Person, who shewed no Right or Vouchers; if he did, his Prevarication and Perjury are endless; this Part of his Evidence affords a Dilemma from which it is not easy to extricate him.

The Supreme Court admitt the Validity of *Zekeriab's* Evidence; they conclude then, he did not produce the Deeds: Ought not this Circumstance to have caused a Mitigation in the Damages? For the Reason why it did not, we must revert to the Decision of the Court on the Justification of the *Cawzee* and *Mufties*, which by denying their Authority to act, pronounced them Individuals acting without Authority. Such is the cruel Consequence of an Application of the Maxim of *delegatus non potest delegare* to Causes of this Nature.

The Proceedings of the Supreme Court have now been followed from the first Institution of the Suit to the Decision upon the two Deeds, which established the Plaintiff's Right to the Estate and Effects of her deceased Husband, Considered as deprived of these Effects by the Defendants, the Court deemed her intitled to a Compensation for their Value; the Proceedings of the Court with the Evidence before them on this Point now come under Consideration.

The Mode on which the Supreme Court ascertained the Value of the Effects of the deceased Shahbaz Beg.

One Part of the Commission given to the *Cawzee* and *Musties* by the Council at *Patna*, as appears before, was to take an Inventory of the Effects of *Shahbaz Beg* deceased; and after a Decision had been passed by the Council at *Patna* on the Rights of the two Parties, they were directed to make a Division of them according to their Report, founded on the *Mahomedan Law*, by which the *Begum* was to receive one fourth Part only.

It is material to recur to the Evidence which was given before the Supreme Court, to see how these Facts were set forth there.

Zekeriab's Testimony is ready on every Occasion: let us begin with him, taking his own Words, copied from his Evidence delivered the first Day of *December*, one thousand seven hundred and seventy-eight:

"From the Day that they began to take the Inventory to the Day that I was imprisoned, she (the *Begum*) remained in an Apartment in the Back-yard; they turned us out; I could not see them take the Inventory; I could not see what passed afterwards, for we were all turned out of the House; and the Doors were sealed up. The *Cawzee* came another Day, and I saw him take an Inventory of the Effects one or two Days after the Apartments were sealed up; I was in the out Room. The *Cawzee's* *Dewan Anunderam* took an Inventory of the Effects; (he then enumerates the Effects.) The Inventory that I mentioned was taken of the Effects, was it produced I should certainly know it; the Paper produced is the Inventory I mentioned."

On the same Day he speaks of the Division of the Effects as follows:

"I saw the Defendants *Cawzee Sadi*, *Mustie Berkutab*, *Mustie Golum Muckdoom*, *Bebader Beg*, and their Attendants divide the Effects. I did not see them; all the Defendants said, they had divided all the Effects. I was under the Charge of *Peons*; they kept me at a Distance. I was near enough to see the Effects divided; the Effects were divided into four Shares, one of which they set apart for the *Begum*, and gave the other three to *Bebader Beg* the Defendant. I never saw her (the *Begum*) receive her Part that I mentioned. She was not present at the Division; I do not know of a Grain of these Effects ever having come to the Hands of the Plaintiff after the Division mentioned by me."

On

On his Cross-examination he says, "I do not remember that *Nual Sing* or *Neaz Ally* were present the first Time, and wrote any Inventory. I was present the first Time, and saw *Nual Sing* and *Neaz Ally* come and go from the Plaintiff's, but did not see them make an Inventory. I do not remember the second Day of taking the Inventory, that the *Duan* of the Defendant *Cawzee Sakdee* said to *Nual Sing* or *Neaz Ally* (I do not know, which) that he had better take a Copy of what was written, it might be of Use; but I do not remember that he did. One Day they (the Defendants) came and took an Inventory, and I did not see either *Nual Sing* or *Neaz Ally*, but the second Time one of them took a Copy of the Inventory, I do not know which: the first Time that they came I gave no Order to take an Inventory. I never gave such an Order. I saw no Inventory in the Hands of any of the Plaintiff's Servants. Within these four or five or eight or ten Days I have seen in the Hands of the Plaintiff's *Vakeel* an Inventory."

The above is given as a Specimen of *Zekeriab's* Clearness and Consistency in his Evidence; the Reader will not forget the Observation of the Court upon it. To understand the above Extract from his Evidence will require the Efforts of a superior Understanding; to reconcile to Credibility the different Assertions contained in it surpasses the Labour of human Ingenuity.

Here, as usual he stands refuted by the Evidence on the Part of the Defendants. Two of their Witnesses swear, that a Copy of the Inventory was made by *Zekeriab's* Orders. The Fact is not in itself of the highest Importance; the Division of the Effects is a more material Circumstance. In the Evidence delivered in by *Zekeriab* the same Day, he swears he did not appoint one *Hajee Hatem* to appraise the Effects for him. But in this he is contradicted by three Witnesses on the Part of the Defendants, one of whom is *Hajee Hatem* the Appraiser, who swears that *Zekeriab* did desire him, *Hajee Hatem*, to appraise the Goods for him; and they are also uniform in persisting that he directed one *Ismael* to take Charge of the fourth Share allotted for the *Begum*.

From the preceding Particulars of the Evidence exhibited in this Cause it clearly appears, that an Inventory of the Goods was taken, and even from *Zekeriab's* Evidence that the Plaintiff's *Vakeel* was in Possession

session of this Inventory immediately before the Trial. This would have been the fairest Ground for ascertaining the Value of the Effects, and of Course for the Assessment of Damages; yet at the Trial it was not made the Ground-work of either, although the Attornies on both Sides were served with Notices to produce it. This Omission, as well as the extraordinary Application made by the Court of the Law of Evidence, are well worthy Consideration.

Inventories had been made at *Patna* by the Agents of both Parties; of one of them a fair Copy with a Translation annexed had been authenticated by the *Cauwze* and *Muslies*, and had the additional Sanction of the Signature of the Chief and Council of *Patna*. This was tendered in Evidence by the Defendants, but was at once rejected, *because an Original existed which was better Species of Evidence*.

It was not in the Power of the Defendants to give the Original in Evidence, which existed on foul Scraps of Paper and was of an immoderate Length, because no Translation of it had been prepared, either in Confidence, that the Copy which they deemed in this Case the most regular and best authenticated Evidence would have been received, or on a Supposition that the Plaintiff would have produced an Inventory; for by a Rule of Court, no *Persian* Paper can be received in Evidence, unless accompanied by a Translation. The Defendants however after their first Disappointment, tendered this original Inventory upon the *second Day of the Trial*, in the Hope and Confidence that the Court would have directed their Translator to make a Translation of it; but that Hope was disappointed, and the *Persian* Roll now stands an Exhibit in the Cause, unintelligible to the Court, and of Course unattended to in the Decision. They afterwards made Application, grounded upon the Circumstances of peculiar Hardships attending the Case, for a short Time to prepare a Translation, that they might not lose the Benefit of that Evidence, which must have been more clear, satisfactory, and decisive, than any other on the Point on which it was meant to be adduced. This was refused.

The Defendants as a last Resource attempted to supply the Place of this Inventory with the parole Evidence of Persons, who were present when the Effects were divided at *Patna*; but of this Advantage they were
also

also debarred, because it was contrary to that Rule, which rejects parole Evidence, where written Evidence exists.

The Defendants being thus disappointed in every Quarter by the Opposition of the Law of Evidence in all its Strictness, the Number and Value of the Effects of *Shabbaz Khan* deceased, which decides as far as Four-fifths of the Damages, stand established on parole Evidence, and that of the most suspicious Nature, exhibited on the Side of the opposite Party.

It has been shewn by the Evidence of *Zekeriab*, that an Inventory was in the Possession of the Agent of the Plaintiff a few Days only before the Trial. It is clear therefore, that written Evidence existed on *her* Part, which her Attorney had been served with Notice to produce; yet she is allowed to bring forth her Witnesses, who speak from Memory of the Quantity and Value of the Goods divided at *Patna*. For what Reason she was exempted from the same Law of Evidence, which was applied with such uncommon Rigour to the Defendants, is a Circumstance which requires Explanation.

That the Number and Value of the Goods was greatly exaggerated by the Plaintiff's Witnesses, there is every Reason to believe. The whole Amount was about two hundred and forty thousand *Rupees* by their Account: According to the Inventory and the Opinion of *Hajee Harim*, the Person who appraised them, the whole Value of the Effects divided, including Twenty-eight thousand *Rupees* in Money and a promissory Note of Seventeen thousand *Rupees*, amounted only to Eighty-seven thousand nine hundred and six *Rupees*; this Valuation excludes an Elephant and three Horses, which on the most liberal Estimate cannot exceed Five thousand *Rupees*; the Whole therefore falls short of Ninety-three thousand *Rupees*.

This Account sufficiently explains the Conduct of the Plaintiff, in neglecting to produce the Inventory in her Possession. Although from the Evidence exhibited on the Part of the Plaintiff, it appears the *Begum* did not receive her fourth Share of the Effects, yet after the most attentive Perusal of it, it is no where discovered, she was precluded from taking Possession of it; in which Case her Neglect was optional, and cannot in Justice be deemed a Crime on the Part of the Defendants. Yet this pro-

duces no Mitigation of the Damages given against them. The Question is taken up in the most favourable Light for the Court, for it was proved, that one *Ismael* had actually by *Zekeriab's* Orders taken Possession of the Share allotted to her; what he afterwards did with it, is to enter into an immaterial Detail of the personal Injuries set forth by the Plaintiff to have been sustained by her, which would render this Narrative too voluminous. They cannot be deemed personal Injuries, unless the Authority of the *Cawzee* and *Musties* under the Orders of the Chief and Council at *Patna* to enquire into the Cause be first denied. In the long and laborious Judgment given by the Court, some Facts and Assertions are admitted as proved, where Proof seems to be deficient: And there is not a Doubt, that the Witnesses on the Part of the Plaintiff have falsified many Facts and exaggerated others: and particularly that *Zekeriab* has done so, upon whose single and suspicious Testimony the Proof of these Facts depends. All of these Witnesses however had every Advantage, which the Indulgence of the Court could give them.

There is one Circumstance further, which is of great Weight, and ought to be attended to. That no Proof of Corruption whatsoever was exhibited against the *Cawzee* and *Musties*, who tried the Cause at *Patna*. The Plaint of the *Begum* was not laid on any such Charge; nor is there any Reason whatever to believe that they acted from corrupt or partial Motives in their Investigation.

The Evidence given as to the Circumstances and Fortune of the Defendants, which it was apprehended might have furnished some Measure for the Damages in this Case, is as follows: *Zekeriab* swears the Defendant *Cawzee Sadi* is a great Man and a rich Man, and that the two *Musties* Defendants are in prosperous Circumstances.

Yet he is again contradicted by the *Mufti Currimullah*, who swears the *Cawzee* received only one hundred *Rupees* per Month; and that there are five *Musties*, who have in all One hundred and twenty *Rupees* per Month. There is no Evidence as to the Substance of *Babader Beg*; the Share of *Shabbaz Beg's* Estate, it should be recollected, was received by him in Trust for his Father.

This

This Trial is one of the most remarkable ever known, in whatever Point of View we consider it. Let us travel over the Ground we have trodden, and bring the Whole into one concise Point of View.

A Suit is instituted in the Supreme Court of Judicature at *Fort-William* against four *Mahomedans* residing in the City of *Patna*: Three of them are Doctors of the *Mahomedan* Law, Officers of a Provincial Court of Justice established at *Patna*; and the Action is laid for Acts done by them in the Discharge of their official Duty, in Obedience to the Orders of that Court, whose Officers they were.

The fourth was a Plaintiff who had sued in the same Court, and in Consequence of a Sentence passed in it, had been put in Possession of the disputed Property, but in Trust for his Father only.

Three of the Defendants endeavour to justify their Proceedings under the Authority of the Court, by whose Orders they had acted: The Authority of that Court is denied, and its Process declared illegal on a Maxim of the Law of *England*, that a Person holding delegated Power cannot delegate it to others. By this Decision they are declared Individuals, who had proceeded without lawful Authority, and their Actions pronounced Trespasses, before it could be known whether their Conduct had been just, upright, and honest, or not.

The other Defendant claims an Exemption from the Jurisdiction of the Supreme Court, but his Plea is over-ruled. He attempts to justify his Conduct; his Justification is set aside, because it does not cover all the Articles in the Plea.

In the Course of the Trial, two Deeds in the *Persian* Language are set up by the Plaintiff as the Grounds of her Right to large Property. Five Witnesses are brought to prove them, four of whom are low, ignorant, and illiterate. The History which these Witnesses give of the Deeds is highly improbable and absurd. The Person who drew these important Deeds is unknown; their Origin is wrapped up in Secrecy and Mystery: The Copyist of one only can be found, and he swears he copied it after the Death of *Shabbaz Khan*: The Person, said to have executed these Deeds, lived at *Patna* with Magnificence, has numerous Friends and Connexions; yet none of these were asked to attest these Deeds, none of them appeared to prove them, or to corroborate the Intention of the supposed Maker of them. The principal Evidence on the Plaintiff's

Side is a Person strongly attached to her, in her Confidence, and materially interested in the whole Suit. This Evidence is throughout liable to Suspicion; he prevaricates, contradicts, and perjures himself; he tells an improbable Story of a Copy of one of the Deeds, which he sent to *Cabool*; his Reasons for having this Copy made are different, but the Interest of the Plaintiff was his principal Object. Yet he conceals the Transaction from her, afraid of her entertaining Suspicions of him on this very Account. This Copy is only made from a foul Draft; yet two of the Witnesses whose Attestations stand upon the original Deeds, and who confirmed them in Court, without Qualification or Reserve, attest this Paper as a true Copy of an Original.

The Point on which four of the Witnesses are examined, is simple, yet their Evidence, which ought to have been clear and precise, is accompanied with such ridiculous or extraordinary Circumstances, as render it highly suspicious.

Examine the Deeds: one of them is, in its Terms absurd, contradictory, and inconsistent with itself: Compare it with the other, the same Observations occur: They mutually supersede, and render each other null, by Contradictions in their Terms and Operation.

The Person supposed to have executed the Deeds is a *Mahomedan*; the Parties in the Suit are of the same Sect; try the Deeds by their Laws, they have neither Force or Validity.

The Supreme Court have *Molievies*, or Persons versed in the *Mahomedan* Laws, to assist their Opinions in such Cases, whose Evidence must have been more material, than any other in ascertaining the true Merits of the Cause; no Reference is made to them, their Opinions is never asked.

Zekeriab, the Plaintiff's principal Witness, who declares himself a learned Man, states Delivery during the Life-time of the Donor as essential to the Validity of a Deed of Gift; no Delivery of the Effects, said to have been conveyed by the Deed produced in Court, was ever proved by him or any other Person to have taken place during the Life of *Sbabbaz Beg Khan*, nor was any such Delivery ever attempted to be proved.

Take

Take the Witnesses on the other Side of the Question ; there is no Reason to suppose them interested in the Suit ; their Evidence as to the Forgery is positive.

The Judges of the Supreme Court admit the Validity of these Deeds, and declare, that the Plaintiff proved that her deceased Husband had, by Virtue of them made over to her his whole Estate real and personal.

In Order to determine the Damages, the Value of this Estate must be ascertained. The Defendants have an Inventory of the Effects on loose Scraps of Paper unconnected and voluminous ; they produce a fair Copy and a Translation authenticated in the most regular and satisfactory Manner Circumstances would allow ; it is offered in Evidence and rejected ; they beg for Time to make a Translation of the Original, this is refused ; they deliver in the Original without a Translation, the Court receive it, do not order any Translation to be made of it, by which it becomes a useless, unintelligible Exhibit in the Causes, and take no Notice of it ; they attempt to substitute parole Evidence, they are thwarted, because better written Evidence exists, which as before recited, the Determination of the Court had rendered useless.

The Plaintiff is proved to have in her Agent's Hands an Inventory ; but never offers to produce it : she brings parole Evidence on the Value of the Effects ; it is received, and the Account of her *viva voce* Witnesses admitted.

Two Circumstances occurred in Mitigation of Damages ; one, a Want of Proof that the Plaintiff was precluded taking Possession of the fourth Share of the Effects allotted her ; a second, that she had never produced the original Deeds before the *Cawzee* and *Mustries* at *Patna* ; as the Grounds of her Right ; in which Case it was impossible for her to have substantiated her Claim before them : Yet it does not appear that these Circumstances had any Weight.

One of the Defendants has a small monthly Salary ; the two *Mustries* still less, the third *Bebader Beg* is not proved to possess any Thing of his own ; there is no Proof nor a Shadow of Proof, that the Defendants acted corruptly.

Under

Under all these Circumstances, the Supreme Court of Judicature decreed three Lacks of *Rupees* or Thirty-six thousand Pounds Sterling in Favour of the Plaintiff *Nadara Begum*.

The Council of *Patna*, who had become Bail for the Defendants, surrendered them; they were sent down from *Patna* to *Calcutta* under a Guard of *Seapoys*; the *Carwazee* sunk under the Weight of his Misfortunes, and perished on his Way. The two *Musties* and *Bekader Beg* were not equally fortunate; they survived the Fatigues of the Journey to suffer the Miseries of Confinement in the common Gaol at *Calcutta*, where they have lain for many Months; as if their Situation there, was not a sufficient Punishment, they were treated with uncommon Severity; the Deputy-Sheriff seized their private Papers, which they had carried with them into Prison; Religion might have afforded them some Resource, but their *Koran* was also seized.

They have since made Applications to the Governor-General and Council, who have paid an Attention to them, which does Honour to their Humanity. To relieve them from Prison was not perhaps within the Bounds of their Authority; but they have alleviated their Miseries, as far as they could, by an Attention to their Wants, and have settled a Pension upon each of the Sufferers, as well as upon the Widow of the *Carwazee*.

If the Misfortunes of these People had centered in their own Persons, Pity would have had a more confined Circle for its Operation; but their Families and Friends have been likewise involved in the general Wreck of their Fortunes: What they have sustained from the Process of the Court, will be best known from their Complaints, and to those the Reader is referred.*

In considering this Sentence, which is tantamount to one of perpetual Imprisonment, we are at a Loss to conceive, what Crimes have been committed by the Persons against whom it is pronounced. The Evidence before the Court supplies us with none, and we are left to find them only in the Judgment of the Court.

* *Vide APPENDIX.*

If we revert to the true State of the Question, as it stands upon the Evidence, it comprises but a few Points of a simple Nature; and may be easily decided by those, whose Reason is not bewildered by too great a Partiality for the Laws of *England*. In considering the Subject thus, the following Questions will naturally present themselves.

1. Had the *Patna* Council Authority to take Cognizance of the Suit preferred before them by *Behader Beg*?

2. In referring the Investigation of the Cause to the *Mahomedan* Lawyers, did they act contrary or conformably to the Spirit of the Regulations laid down for their Guidance, to established Usage, and to Principles of Justice, Policy, and Humanity?

3. In the Opinion and Report which they delivered on the Case, did these *Mahomedan* Doctors, or did they not, pronounce rightly and justly according to their own Law?

4. Had the Council of *Patna* Authority to carry their own Decree into Execution? To all these Questions the Writer of these Sheets does not hesitate to answer in the Affirmative; and dares further assert, that there is no Proof that a Negative can be given to any one of them. But whether they be answered in the Affirmative or Negative still we must ask,

1. By what Authority the Supreme Court assumed the Power of hearing and trying a Cause, which had been decided in a Country Court of Justice?

2. By what Right they assumed the Power of trying the Officers of that Court, for official Acts done by them, when Bribery or Corruption made no Part of any Complaint against them?

3. Upon what Principles of Justice and Equity they acted, when they set aside the Justification of the *Cadi* and *Musties* on a technical Maxim of *English* Law?

4. By what Law they pronounced *Behader Beg* to be amenable to the Jurisdiction of the Supreme Court?

5. Upon what Principles of Justice and Equity did they proceed, when they determined that two *Persian* Deeds were valid, without either consulting *Mahomedan* Lawyers, or referring to the Principles of *Mahomedan* Law?

6. By

6. By what Rule the Laws of Evidence were opposed to one Party, and unapplied to the other?

7. By what Law they decreed Damages, the Effect of which must be perpetual Imprisonment, against four Persons, whose whole Property could not amount to One-tenth of the Sum?

These are the grand Points for Discussion. Whether the Defendants the *Cawzee* and *Musties*, gave in an incorrect Report on the Case referred to them; whether they were perfectly regular in their Proceedings or not, are all Questions of an inferior Nature, which cannot affect the more material Points, on which the Merits of the Cause turn. Even though it should be said, that they failed in their Evidence in Support of the Forgery of these Deeds, still this will not amount to any Proof, that they decided at *Patna* contrary to the *Mahomedan* Laws of Inheritance: Or that the Supreme Court, in hearing a Suit against them, and in inflicting so heavy a Punishment on them, acted right.

The general Consequences which have resulted, or will result, from Decisions which the Judges have pronounced in the Course of this Trial, have been slightly mentioned; but they deserve to be more particularly pointed out.

In assuming a Controul over the Country Courts of Justice, and in hearing Suits instituted against the Officers of them, they impede or rather put a Stop to the Administration of Justice throughout the Country. For what Man in his Senses will undertake the Discharge of a publick Trust, which is attended with imminent personal Risque; for which he may be sued now, or at any Time hereafter; which may be made the Grounds of Damages equal to his whole Fortune, or of a Sentence of perpetual Imprisonment? Can unbounded Zeal alone for the Welfare of the Community animate a Man to act, when the Dangers of Penury and Imprisonment are held in Suspence over his Head? The Company have hitherto defrayed the Charges incurred by defending their Servants, but they may not always continue in the same Disposition; the Expence is continually increasing, and will at last exceed what even their Finances can support. But what Compensation can Persons exposed to such Accidents receive for the Loss of their Reputation, which the Judges can
attack

attack either directly, or indirectly as they please? This is not the Language of Supposition, they have already impeached the Characters of Individuals on several Occasions.

If on the other Hand the Course of Justice be finally stopt, as it actually is in some Parts of the Country, and impeded in all, what must then follow? A Scene of Anarchy and Confusion, the Triumph of Oppression, and the despondent Lamentation of the Poor.

That it was the Intention of the Legislature to give the Supreme Court a Controul over the judicial Establishments in this Country, can never be supposed. A Declaration to this Effect was indeed made from the Bench; but though this Controul may be disavowed in Words, it is in fact exercised. The Superintendants of these Country Courts, and Officers in them, and Parties who have had Suits in them, are daily subject to Actions in the Supreme Court, and the Judges without Scruple determine on the Regularity or Irregularity of the Proceedings held in them, which is to all Intents and Purposes the exercising of an actual Controul over the Establishments themselves.

The *English* Government in *Bengal* is founded on Opinion only, not in real Strength. The Natives, whose Manners partake both of servile Timidity and licentious Insolence, require every Degree of political Restraint, that can be applied without Injury to their Property, their Liberty, their Usages, or Superstitions. But this Controul strikes at the Root of the Government in *Bengal*; and by annihilating a Restraint, equally beneficial to the Natives, and essential to the Existence of the Government, cherishes a Principle of Destruction, which will sooner or later have its Effect.

The Consequences which result from the Decision of the Court, that a Farmer of the Revenues is in that Character a Person subject to their Jurisdiction, were so clearly stated by the Natives themselves, as soon as this Decision became publick, that there is little Occasion to discuss them here. A Petition presented by the principal Farmers or Contractors for the Revenues in the *Dabar* Province, is given in the Appendix, to which the Reader is referred.

In *Bengal* a clear Distinction has ever prevailed between these Courts, which have Jurisdiction over Revenue Matters and the Persons concerned therein, and such Courts of Justice as are established on more general Principles, and with more extensive Jurisdiction. This Distinction cannot be better defined than in the Words of the *Nabob Mahomed Reza Khan*, contained in a Memorial which stands on the Proceedings of the Supreme Council, and was delivered

vered soon after their Arrival in this Country. The Quotation is so applicable to the Argument in Point, as well as to other Circumstances of the *Patna* Cause, that it is given at full Length :

"The Administration of Justice is one of the most important Concerns of Government: the good Regulation of which materially depends upon this Point. Justice in this Country has a long Time been administered according to the *Sherab*: The Welfare and Ease of the Hearts of the People arise from this Sort of Justice: all the Rules of Justice are contained in Books, which explain every Point relating to it: and this Justice is according to Custom, and the Abolition of it distresses the People of this Country, and introduces Confusion in the Affairs: because the People of this Country have assimilated their Dispositions to former Customs, and in slight Deviations, particularly in what relates to Justice, are much perplexed. Former Rulers appointed two Places for the Administration of Justice, one the *Adalat ul Alia* or Supreme Court, the second the *Khalfa*; in the first Murders, Robberies on the Highway, Night Robbers, Thieves, Highway-men, and even other Causes of a criminal Nature, with their Punishments and Penalties, were examined and determined: the Decree was sent to the *Nazim*, and on the Day of Justice the *Gawaz* and *Mustafis* came to the Presence, and the *Nazim* from Books in the Supreme Court pronounced the final Decree, which he also signed. Besides this, Civil Causes, such as Quarrels about Lands, Disputes of Merchants, *Rajmans* and other Disputes of the *Rajats*, *Zemindars*, and *Talukdars* were all enquired into, at the *Khalfa*; over which a Superintendent presided, by whom these Causes were settled. These two Places were appointed with this View, that if Civil Causes *Mukadamat Molkis* were not under the Superintendant of *Khalfa*, Obstructions in the Collections and other Business would take Place. The Supreme Court may be called the King's Court, the *Khalfa* is the Country Court. In principal Cities, such as *Dacca*, *Sylhet*, *Banggon*, *Purana*, *Rajshah*, *Baglepora*, and *Haughly*, Causes were also adjusted there by the *Sherab* of the *Sudder*; and in the *Mofussil* or Provincial *Adalats*, if the Causes of different People were not well settled, and the Complaint came to the *Sudder*, the Complainant and Defendant were both summoned, and the Cause enquired into, and settled."

In England also, the Writer is informed, that Causes relating to the Revenue are not tried in the common Courts of Law, nor by the general Laws of the Realm, but under the Direction of particular Statutes.

Every Argument which can enforce the Necessity of this Distinction in England, applies with additional Strength, when considered with respect to Bengal.

An Interference of the Judges in Revenue Matters, if it had not in Fact preceded their Decision that a Farmer as such is subject to the Jurisdiction of the Supreme Court, must have been the necessary Consequence of it: The general Confusion and Loss of Revenue which has ensued and must ever ensue such Interference, need not be pointed out. The Case of *Camilleri* stands on Record; he was a Farmer of the Revenue, and proved a Defaulter; for the Balance which he owed to the Company, he was confined by the Provincial Committee of Revenue at Calcutta, to whose Jurisdiction he was subject. He commenced an Action against the Persons, by whose Orders he had been confined, but after a Trial of many Days was cast; a single Instance, in which the Servants of the Company have gained a Cause. The Company, however, lost at least Thirty thousand Pounds Sterling, by their Engagements with that Man, the greatest Part of which Sum would in all human Probability have been recovered, if the Court had not interfered.

The Publick will now be able to decide, whether the Judges of the Supreme Court have well applied the Laws of *England* to the Case before them. And if they have been warranted in that Application as the Law now stands, whether the immediate and most essential Disadvantages which must arise from the Existence of such Laws, do not demand the most serious Attention of this Nation.

When Consequences of so alarming a Nature, threaten the Community and Individuals, from an Application of the Laws of *England* to Cases in the Midst of *Asia*, the Writer apprehends he does not ill perform his Duty to his Sovereign, and to the Nation at large, in representing them in their true Colours.

Some Attention he trusts will be paid to the united Voice of the Community; some Members of the Senate of *Great Britain*, interested in the Welfare of their Fellow-Citizens, awake to the Cries of Humanity, and animated with Zeal for the Nation, will be persuaded himself display those Abilities, which have shone with so much Lustre on less important Occasions, in stating the true Situation of this Country, the Impossibility of applying the Laws of *Great Britain* to it, the Impropriety of the Jurisdiction possessed, or assumed, by the Supreme Court, and the Misery it has actually occasioned; and that they will exert themselves in procuring Relief for those unhappy Persons, who are now languishing in the common Gaol at *Calcutta*, without either the Consciousness or Imputation of a Crime, and whose innocent Sufferings must compel the most unwilling to acknowledge either that the *English* Laws was inapplicable in their Case, or that it is not "the Perfection of Reason."

From the Efforts which will be made in *England* to procure them Relief, of which they are not wholly ignorant, these Sufferers entertain a Confidence, which enables them to bear up against the Miseries of their Situation. This Confidence

s their only Source of Consolation, for they have lost the Benefit of an Appeal. It was not in their Power to discharge the Damages given against them, without which it was understood an Appeal could not have been made; and the Supreme Council, whose Humanity prompted them to afford them all the Assistance they could with Propriety grant, did not think themselves justified in advancing a Sum of Money to so large an Amount from the Company's Treasury. But as the Whole of the Evidence tendered in Court happens not to appear upon the Records of the Trial, the Appeal, if made, would have been heard under every Disadvantage for the Defendants.

The Writer cannot conclude these Remarks without expressing his Regret, that the Cause should have so weak an Advocate; a Misfortune which has throughout attended it. His Inability to discuss the legal Questions which arise in it, is a Defect, which could not be remedied in *Bengal* by procuring other Assistance. In speaking of what relates to this Country, he is more within his Sphere, and his Observations on the Manners and Customs of the Natives and on the judicial and political System established here, may convey that Information, which appears to have been so much wanted, when the Act of Parliament respecting *India* Affairs received his most gracious Majesty's Approbation.

With whatever Imperfections these Remarks may be loaded, the Cause is too important to be withheld from the Knowledge of the Publick, and on their Candour and Impartiality he relies, for the Indulgence his Incapacity requires.

End of the Narrative of the Proceedings in the Causes BEHADER BEG and NADARA BEGUMP

NARRATIVE of the Criminal Prosecution attempted to be instituted against Nadara Begum and others.

THE preceding Sheets contain a Relation of the Rise, Progress, and Conclusion, of the Civil Action brought by *Nadara Begum* in the Supreme Court of Judicature at *Fort William* against *Bebader Beg* and the *Cawzees* and *Musnies* of *Patna*. The Sequel of the Proceedings in this Cause, in Consequence of an Attempt made by two Gentlemen of the Council of *Patna* to prosecute the *Begum* and her Witnesses in the Supreme Court for Forgery, is no less extraordinary.

The Reader will admit, that these Gentlemen had every Motive which could influence them as Men of Honour and Humanity to take this Step. Their Judgment had been impeached, and their Reputation traduced by the Court in the Civil Suit, and their Fortunes since attacked by the *Begum* and her Abettors by a new Civil Suit instituted against them; while on the other Hand, the Officers of the Court at *Patna*, without any other Crime than acting in Obedience to their Orders, and an Individual, for only asking Justice at their Hands, had suffered in a Sentence, which amounted to perpetual Imprisonment and Confiscation of all their Property. The Petitions of these unhappy Sufferers will shew, with what an unexampled Degree of Rigour this Sentence had been enforced. Under Pretence of greater Security to their Persons, they were deprived of an Apartment, which had been hired for them by their Attorney Mr. *Naylor*, and thrust into a Place no better than a Dungeon, where they were confined together with a Number of low People, in the Midst of Filth and Wretchedness.

No Means of Relief under Heaven, appeared for these unhappy People, except by bringing the Wickedness of their Prosecutors to Light, and proving to the Satisfaction of the World the Existence of the Forgery, which had been the Occasion of their Misfortunes.

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Every Attempt, which had been hitherto made for this Purpose, had been over-ruled either by the Influence or Dread of the Authority of the Court. Twice the Witnesses had been taken out of the Hands of the Criminal Magistrate of the Country, to whom they were properly amenable; first by Writs of *Subpoena*, when they were in the Custody of *Mahomed Reza Khan*; the second Time by Writs of *Habeas Corpus*, when they had been taken up by *Sudder ul Hoch Khan*, who succeeded *Mahomed Reza Khan* as *Naib Nazim*. Some of the Judges had themselves been applied to, by the Company's Commissioners of Law-Suits, to hear Depositions against the Parties, and bind them over to take their Trial, but without Effect. No Method therefore remained to the Gentlemen of *Panna*, but to wait for the Meeting of the Grand Jury and prefer an indictment to them.

The Writer is warranted in affirming, that no Motive of Malice or improper Resentment influenced the Gentlemen who undertook this Prosecution, but merely a just Regard to their own Character, Commiseration of the Sufferings of the People in Prison, and a Desire to clear up to the World a Matter which had engaged much of the public Attention in *Bengal*.

It was considered by them, that the Proof of the Forgery would be established beyond the Power of Cavil or Doubt; that the Evidence they had to produce in Support of it must carry Conviction to the Minds of the Judges themselves.

It was thought also, that the Judges could not well object to a Prosecution for Forgery after the Trial of the Witnesses before the Country Courts had been prevented; and after it had been recommended by the Chief Justice himself in delivering the Judgement in the Civil Suit in the following remarkable Words, which the Reader is desired to bear in his Memory:

"These Men (speaking of *Nanda Begum's* Witnesses) if guilty, have certainly made themselves amenable to this Court by their Evidence; perhaps for publishing these Deeds, knowing them to be forged; but most undoubtedly for Perjury, if the Deeds are not genuine."

"If the Gentlemen of *Panna* conceive themselves impeached, either in Judgment, or Probity, surely they cannot think it will tend to clear their Characters, to prosecute these Witnesses in the *Black Courts*."

By these Words the Judges clearly point out a Prosecution before themselves, and discourage every Idea of it in the Country Courts.

The fullest Conviction in the Minds of these Gentlemen of the Crime imputed to the *Begum* and her Associates; and a Commiseration, as has been observed above, of the Sufferings of the Officers of the Court of Justice at *Panna*, proceeding from a necessary Obedience to their Orders, left no Hesitation with them, as to the Part they were to take; and at once determined them, at the Expence of their private Fortunes, to undertake the Prosecution, though aware of the many Embarrassments and Disadvantages, which they were likely to experience

silence from being constrained to resort to the same Judicature for the Trial of that Fact as a criminal Offence, upon which the Court had already in another Shape very positively decided.

One Advantage, however, which they looked to on this Occasion seemed in a great Measure to compensate every Difficulty and Inconvenience which they had felt on the former Trial.—This Advantage was no other than what most of my *English* Readers may consider perhaps as a very common one, “A Trial of the Offenders by a Jury.” From the Impartiality of a Jury, which is in *Bengal* allowed only in criminal Cases, they fully hoped for such a Verdict as would at once evince the Guilt of the Triumphant, and the Innocence of the suffering Parties, and would besides have the further good Effect of clearing their own Characters from any Suspicions of indirect or corrupt Motives, which might have been entertained in Consequence of certain Imputations of that Nature, which the Chief-Justice had ventured to throw out in his Judgment in the Civil Suit: Notwithstanding that, there did not exist before the Court a Particle of Evidence which furnished a Colour for such Imputations.

The Writer is aware that a Prosecution of this Sort, commenced under such Circumstances, and which in its Event might expose the Objects of it to the severest of Punishments, has somewhat the Appearance of a harsh and vindictive Proceeding: But, for the Credit of every Person concerned in that Prosecution, let it be understood, that the Punishment of *Nadara Begum* and her Associates was by no Means the sought Consequence of this Prosecution. The Establishment of their Guilt was all that was hoped for or intended. The Circumstances of Terror which accompanied this Sort of Prosecution, would, it was imagined, have so far operated upon the Fears of some of the Persons who had assisted the *Begum* in the Execution of her fraudulent Project, as to have drawn from them that Truth which the Expectation of Reward had hitherto suppressed.—It was, however, the firm Determination of the Prosecutors, in Case of the *Begum's* Conviction, to have left no Means untried to procure her Pardon: Their Determination on this Head was well known to most Gentlemen of their particular Acquaintance in *Calcutta*.

A very early Period discovered the Sort of Opposition, which the Prosecutors went so expect in the Course of this Business: On the Application of their Attorney for the Copy of the Evidence in the Civil Action, he received it from the Officer with an Omission of the two *Perjur* Instruments alledged to have been forged: The Application was renewed by the Attorney, presuming that the Omission had arisen from Accident; but the Answer from the Officer informed him, that Directions had been given to him not to furnish a Copy of these Instruments;

struments; and on the Attorney's urging a Right to a Copy of these Records, which had been filed by him on the Part of the Defendants, the Officer informed him, that the Chief-Justice in a Conversation on the Subject with Mr. Justice Hyde had determined it as their Opinions, "That the Party had no Right to a Copy of these Instruments; that they did not form a Part of the Evidence in the Cause; that the *English* Translations were the Evidence, and not the *Persian* Deeds." There is no Need of wasting any Reasoning or Argument on this Doctrine, and I am unwilling to make the only Inference which can well be drawn from it, namely, that the Judges knew, that no Indictment could be preferred without an accurate Copy of the Instruments; which it would be necessary to set out *literatim* in the Indictment; and that retaining them was a very effectual Method to prevent the Prosecution. To declare the Translations, and not the original Deeds, to be the Evidence in the Cause, is in Effect to assert, that the Interpreter is the Witness. The Translation, like him, is only the Medium, through which Information is conveyed, when there is no Language in common between the Deponent and the Court.

The Copies of these Instruments were continued to be refused, and were at last procured without the Knowledge of the Court.

It has been imagined, that it was the Intention of the Judges to withhold the Copies of these Instruments, by which Means the Prosecution would be suppressed, from the following Circumstances:

When the Grand Jury applied to the Court for the Order to be made on the Clerk of the Depositions to produce the original Instruments before them, Mr. Justice Hyde, the only Judge then on the Bench, replied to the Foreman, (somewhat incautiously as it should seem) "*That he could not conceive how the Indictment had been drawn without them.*"

An additional Embarrassment, and one very important in its Consequence, to which the Prosecutors found themselves subjected, arose from another Circumstance, which was thought to prove an improper Influence in the Court. The greater Part of the Council at the Bar had been engaged by the *Begum*; and those who were disengaged from any Retainer, could not be prevailed on to act. Repeated and most pressing Solicitations were made by the Prosecutors and their Attorney, and Intimations given to the Counsel, that the most liberal Acknowledgments should be made for their Services: These were not however attended to. The Counsel alledged (how truly it does not concern the Writer to shew) an Excuse for their Refusal, that the Conduct of the Bench towards the Gentlemen of the Bar, who had been employed in the Defence of the Civil Action, had been so severe and illiberal, that no Consideration of Emolument should induce them to appear again in any Matter relative to the Cause; that it exposed them to

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ment from the Chief-Justice, which no Man with Feelings of Honour could submit to.

Mr. *Lawrence*, a Junior Advocate, induced by a personal Friendship to Mr. *Thomas Law*, the Brother of a Gentleman already mentioned in the *History* of the Civil Suit, assented to engage, though single, in the Prosecution; and which he was obliged to conduct alone, though a Rule of Court subsisted, that two Advocates should be employed by the Plaintiff and Defendant, respectively in every Cause, and which had never been broke through till the present Instance. The Displeasure of the Chief-Justice, towards this Gentleman, discovered itself during the Prosecution in several very striking Instances.

On the Eleventh Day of *June*, One Thousand Seven Hundred and Seventy-nine, the Indictment was presented to the Grand Jury: It contained sixteen Counts. The Indictment against *Maha Rajah Nundo Comar*, which was always understood to have been drawn with the first Law Advice in Bengal, has been kept in View by the Drawer of the present Indictment, considering that as a Precedent, to which no Objection could be allowed. The Fact of forging the Deeds was charged against *Nadara* and others, not with an Intent and for the sole Purpose of depriving the *Begum* of her Witnesses, as asserted by the Chief-Justice; but as they were all equally Parties to the Crime, and stained with the Whole of the same Guilt. The Grand Jury proceeded, in their Investigation of the Fact, with a Degree of cautious Circumspection, highly meritorious on such Occasions. Nine Witnesses were examined before them, confronted with each other, and then re-examined. On Saturday the Twelfth Day of *June* the Bill was found and returned into Court. The Advocate for the Prosecution immediately moved, that a *Capias* might issue against the Defendants; Mr. Justice *Hyde*, the only Judge on the Bench, refused the Motion, alleging, that he had some Doubts whether the Prosecutors had a Right to demand the Writ till the last Day of the Sessions. It was urged on Behalf of the Prosecution, that the Practice of suspending the Issuing of the Writs till the last Day of the Sessions, applied only to Misdemeanors, and not to capital Felonies, where, if followed, Justice would in almost every Case be evaded, by the Parties having a whole Sessions allowed them to deliberate on, and effect their Escape; that in the present Instance, if the Application was refused, the Defendants would be enabled to remove themselves out of the Jurisdiction before Monday, when the Motion could only be renewed to a full Bench. The Judge,

notwithstanding this Argument and Expostulation, continued determined in his Opinion, as well as in a Resolution to let the Motion stand over till the Monday following; laying he did not consider the Matter of *any* Contumacy, though made so by the Prosecutors, "as he was very certain *the Defendants would not avoid the Trial.*" The Advocate still earnestly insisting on the Motion being granted, as a Matter of Right, and some Authorities being quoted to destroy the Doctrine which the Judge had adopted, he said he would inform his Brethren of the Case, and desire their Attendance in Court. After remaining near two Hours, he informed the Prosecutors, that his Brethren had declined coming; and that the Motion must stand over till the next Sitting of the Court. The Prosecutors being informed, that the Defendants had received Information of the Bill being found, and were preparing to depart for the *Dakota* Settlement at *Chinurah*; they were advised to make one more Effort to the same Effect as before, and to claim individually from the Judges that supposed Right, which one of them sitting as a Court had refused. Mr. *Naylor* the Attorney, having procured the necessary Certificates of the Bill being filed, which it was imagined would have been a sufficient Ground to have justified any one of the Judges, in issuing a Warrant to apprehend the Offenders, he, attended by the Prosecutors, waited on the Chief-Justice, and requested him to proceed against the Defendants: The Application proved unsuccessful; the Chief-Justice refused to order the Writ or grant a Warrant, alledging as his Reason for the Denial, that he could not with Decency, as a single Judge, interfere in a Matter, which Mr. Justice *Hyde*, sitting as the Court, had adjourned for Consideration. Some Doubts upon the Propriety of that Adjournment being suggested to him, he said, "that had he been in Court he might have done otherwise; that Mr. Justice *Hyde* must himself answer for what he had done if he had acted wrong; but he did not, for his Part, suppose the Defendants would leave *Catara.*" The Sequel has fully shewn, that the Confidence which the Judges reposed in the Defendants, has not been abused by them. The Idea that the Judges were favourably disposed towards them, was strongly impressed on the Defendants, and aided by many Appearances of Protection and Support. The Application to the Chief-Justice having thus proved unsuccessful, it was made to the remaining Judge, Sir *Robert Chambers*, where it met with the same Reception

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and Denial. It appeared from Mr. Justice Chambers's Conversation, that the Chief Justice had communicated with him on the Subject, and that they had determined on the same Line of Conduct, to be observed on this Occasion.

Thus baffled in their Attempts, the Prosecutors were constrained to await the Determination of the Judges at the next Meeting.

On Monday the fourteenth Day of June, the Application was renewed by the like Motion, when no Occasion of Delay offering itself, the Court were obliged to grant it, and accordingly ordered that the Writ should issue against the Defendants. The Chief Justice upon this Occasion loaded the Prosecutors and their Attorney with some Invectives, the Memory of which, the Writer of this Narrative is on all Accounts unwilling to perpetuate. All the Defendants, except the *Begum* (who was actually at the *Darb* Settlement of *Chinsurah*) with fullest Reliance on the Judges, attended and surrendered themselves in Court.

A Motion was then made to admit them to Bail on the Grounds of an Affidavit of *Cosah Zekariah* one of the Prisoners, and their Attorney Mr. *Wroughton*. The Council for the Prosecutor made every Objection in his Power to the Compliance with this Motion, which occasioned a Renewal of the same Treatment he had before experienced from the Bench, and the Particulars of which, are, from a Respect for their Situation, suppressed; till at length, worn out and intimidated, the Prosecutors were induced to consent, that the Parties should be bailed till the Sixteenth, which was accordingly done in the trifling Sum of three Thousand *Ruppes*, or about three hundred and sixty Pounds each, and their Recognizances were taken to appear on that Day: By this Means the issuing of the Writ against all the Defendants, except the *Begum*, became absolutely nugatory at the very Time it was granted.

On the 16th of June, which Day was appointed for the Appearance of the Defendants, a Motion was made for their being allowed fourteen Days Time to plead to the Indictment, and to be admitted to Bail during that Period. The Application was supported on the Affidavit of *Nadara Begum*, *Zulficar Khan*, the joint Affidavit of *Cosah Zekariah*, *Ghuras Beg*, *Imam Ulla Beg*, *Cowas Mahomed Beg* and *Shaher Mahomed Imam*, and also on the Affidavit of *Cosah Zekariah* and the Attorney Mr. *Wroughton*, which had been filed the Fourteenth. The Affidavits of *Nadara* and *Guras Beg* were not filed however, when the Motion

was first made; but afterwards during the Debate, by the Directions of the Court on the Occasion; which will be hereafter spoken of.—It is needless to observe on these Affidavits, to expose the Weakness of the Defendants Claim, to the Indulgence, they applied for. The Affidavits go no further, than to assert the Validity of the Deeds alledged to have been forged, without adducing a Belief of the Fact from other collateral Matter, which might and ought to have been adduced upon the Occasion; and how little Persons supposed guilty of the Crime imputed to them, and standing in their Situations are deserving of Credit, or Belief, is left to the Judgment of the World. The single Affidavit of *Gajab Zakeriah* lays something like Grounds for Favour, from the Court: He swears to having before been in Confinement, under the Provincial Criminal Courts, and having been sent with the other Defendants (excepting *Nadara Begum*) to *Mahomed Reza Khan*, the *Naib Navaub*, his having been dismissed from him, with a *Perwannah* or Order to the Criminal Judge at *Patna*, to restore *Nadara Begum* to her Estate; he also swears that *Mahomed Reza Khan* decided judiciously on the *Persian* Instruments, and then declared them valid. All Belief, which might have been given to this supposed Trial and Acquittal, in the Court of the *Naib Nazim*, is entirely destroyed by the Affidavits filed in Opposition to the Motion. The first Affidavit is made by Mr. *Law*, the Chief of *Patna*, in which he swears that all the Defendants charged in the Indictment, except the *Begum*, are Witnesses to one of the Deeds, and all except the *Begum* and *Imoyet Ulla Beg* to the other, and therefore accounts for their being all included in one Bill, which had been so severely animadverted upon by the Chief Justice. He swears also, as to his Belief (from the Enquiries and Investigation, which he has made) of the Guilt of the Defendants, and that there will appear at the Trial sufficient Evidence to convict them: That he the Depo-
 nent, in his judicial Capacity of one of the Members of the Council at *Patna* passed a Decree in a certain Suit before the Council, rejecting the Claim of the *Begum* founded on the Instruments, on a full Conviction of their being forged: That in Consequence of the Acts done under that Decree, and as well as Orders made, pending the Suit, an Action at Law has been commenced against *Behader Beg*, (the Son of *Allum Beg* the Heir of the Deceased) and *Cowzer Suddes*, *Musti Burrucktoolab* and *Musti Gullaum Mackdoom*, the Officers of the Court, who executed its Process.—That a Judgment had been given in the Action for Damages

to the Amount of *Sicca Rupees* three hundred Thousand; and that in Consequence the surviving Defendants *Bebader Beg*, *Musli Barrucktoolab*, and *Musli Gullam Makdoom*, are now in Jail, and he believes will remain there for their whole Lives, unless by the Disclosure of the Forgery committed by the Persons indicted, the Judgment may be set aside. That from a Sense of the Mischief, which has resulted from the Commission of the Forgery, and from a Regard to public Justice, he has been Induced to prosecute the Defendants, and not from any Malice towards them, or any undue or improper Motives. In Answer to the Affidavit of *Zekeriab* as to his Trial and Acquittal before *Mahomed Reza Khan*, Mr. Law swears, "That having been informed "that an Instrument "under the Seal of *Mahomed Reza Khan* had been produced at the Trial of "the Action, purporting to be a Decision on the Validity of the Instruments; "and being desirous of being informed of the Truth thereof, previous to the "determining on his entering on a Prosecution against the Defendants, he addressed a Letter to *Mahomed Reza Khan* to the following Purpose:

"That he knew what had passed respecting *Nadara Begum*, and *Bebader Beg*, "and the *Hells Nama*, which had been declared by the Gentlemen at *Parna* to "have been forged: That this Deponent understood that the *Begum*, meaning "Nadara Begum, had exhibited a *Perwannab* from him, which was asserted to "be a Decision against the Forgery; that this Deponent requested, he would "declare to him in Writing, under his large Seal on a separate Paper, whether "a Decision had taken place."

That this Letter was dispatched to *Mahomed Reza Khan* in the Evening of the sixth of *June*, and that in Answer he received the Letter annexed to his Affidavit—(Vide the same in the APPENDIX, Page 36.)

That it appears from the Letter, that the *Perwannab* in Question was of the Nature or Kind called *Ishary*, or granted on the Representation of one of the Parties alone; and that the Deponent, from his Knowledge and Experience in the Forms and Procedures in the Courts, under the Country Government, and from the Style and Manner, in which the *Perwannab* in Question is worded, verily believes that it was not the Intention of *Mahomed Reza Khan* to pass an Acquittal on the Parties, no Mention being made therein of the different Persons charged with the Crime, or any Notice taken of a Forgery, which would certainly have been done in a Judicial Decision. That it is evident the *Perwannab* is extrajudicial, from the Mention it makes of the Delivery of Goods

and effects to *Nadara Begum*, with which the Criminal Court has no Concern or Jurisdiction over, and which would certainly be mentioned in a formal Instrument from a Criminal Court, declarative of a Decision on a Crime of Forgery. Mr. Law further swears, as to Reasons for believing, that the Instruments were not produced to *Mahomed Reza Khan*, or had been seen by him. And further swears, that he does not believe (for the Reasons he gives in his Affidavit) that the Defendants were before *Mahomed Reza Khan*, at the Time the *Perwannab* issued; but that it was procured on some Representation of a *Vakeel* (or Agent) or by Letters addressed to *Mahomed Reza Khan*. Mr. Law then goes on in his Affidavit to give some Account of the Character and Rank in Life of *Nadara Begum*, and the Dignity she derived from her late Husband, whom the Chief Justice has spoken of in his Judgment, and on all Occasions as a Man of the first Rank and Consequence, and gives him the founding Title and the Appellation of *Omrah*, or Lord of the Empire. This false Opinion, of the State in Life of *Shahbaz Beg*, is entirely destroyed by the Account given by Mr. Law, who had a Knowledge of the Man, and of his Family for many Years during his Residence at *Patna*.

The Letter from *Mahomed Reza Khan*, annexed to Mr. Law's Affidavit, is very satisfactory, and wholly defeats the Account of Facts stated in that of *Zekeriab*. He says the *Perwannab* is an *Ishtary* one, he quotes the Style of it as in the directory Part, which says to the Officer to whom it is addressed, "that having thoroughly understood this Matter (i. e. having made your Examination) decide on the Validity of the Deeds, if in your Investigation they are found authentic, and to confirm this, he further says "in his Letter, the Order thaton is suspended till the Trial." *Mahomed Reza Khan* also informed Mr. Law on this Letter (to confirm what he had said as to the *Perwannab* being no Judgment, or Decision on the Merits, and to convince him that no Trial had taken Place) that the Proceedings (the *Suras* book) were not arrived from *Abdul Ruzbid Khan* (the Criminal Judge at *Patna*) when it was granted; he adds likewise, no final Conclusion and Decree was signed, when the Cause went from thence. To explain the Expression which the *Nabib* makes Use of, it is necessary to mention, that on the Commencement of the Civil Action in the Supreme Court, *Subpanas*

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were taken out by the Plaintiff for the Defendants who were then in Custody at *Maerhedabad*, and about to undergo their Trial. On the Service of these *Subpoenas*, the Nature of which *Mahomed Reza Khan* did not understand, he thought himself obliged to obey them, and permitted the Prisoners to repair assentably to the Summons to *Calcutta*. By this Artifice the Defendants eluded the Court of Justice, and avoided their Trial in the Court, in which their Crime was properly cognizable. In further Support of this Opposition to the Motion, two other Affidavits were made, the one by *Mulay Sherey Ulla* (a *Montay* in the Criminal Court of Justice held by the *Naiib Nizam* or Deputy *Naiib* at *Maerhedabad*;) and the other by *Mulay Gassim* who acted as *Naiib* to *Sudder ul Iluc Khan*, when *Naiib Daroga* but Superior Judge of that Court, previous to the Restoration of *Mahomed Reza Khan*. *Sherey Ulla* says in his Affidavit, that he acted as a *Montay* in the Supreme Court of Criminal Jurisdiction, till the Dismissal of *Mahomed Reza Khan*; he speaks as to the Knowledge of the Practice of the Court, which he particularly describes, and entirely destroys any supposed Effect which might be attributed to the *Permanah* as an Acquittal. He says, that the Cause of *Zahariah* and others for the Forgery, was depending before the Court at *Maerhedabad*, while he was an Officer of it, and that no Decision whatsoever was passed while *Mahomed Reza Khan* continued in Office. He speaks also to having seen the *Permanah* in question, and that the same is an *Illusory one*, which is usually given on the Representation of one of the Parties, directing an Enquiry, and is never understood to be a Decree or Decision. *Mulay Gassim* in his Affidavit speaks likewise as to the Practice and Manner of proceeding in the Court of *Maerhedabad*, and shews, that, consistent with that Practice, the *Permanah* is entitled to no Notice or Regard, as affecting the Merits of the Cause.

Another Letter, addressed by *Mahomed Reza Khan* to *Mrs. Naylor* the Company's Attorney, was filed, with an Affidavit by *Mr. Naylor* verifying the Receipt of it from *Mahomed Reza Khan*. In this Letter *Mahomed Reza Khan* informs *Mrs. Naylor*, that the Defendants had been sent down to him from the Criminal Court at *Panna*, for the Purpose of taking their Trial; and were under the Custody of *Hircarrabs* (Guards,) when *Sulpanas* were sent for them from the Supreme Court, and they proceeded in Consequence to *Calcutta*.

Ad.

An Affidavit was made by *Zurballab* the *Moonshi* to *Mahomed Reza*, who happened accidentally to be in *Calcutta*, in which he authenticates the Letter of *Mahomed Reza Khan*. It might well have been expected that all Credit, which had been given by the Court to the Affidavit of *Zekeriab*, would have no longer remained on the Reading of those filed in Opposition. The Affidavit of Mr. *Law* contradicts that of *Zekeriab*, in almost every Particular. The one is made by a Gentleman of known Reputation, unsuspected Character, and superior Rank of Life, and on every Account deserving of Credit; the other by a Person under the Accusation of a Crime, the Commission of which might be justly attributed to him from the Judgment passed on him by the Jury, till he had proved the contrary at his Trial. The strong Bias which the Court was supposed to have in Favour of the Defendants seemed to have supplied every Defect, real and imaginary, to which their Cause was exposed, and to have enabled them to surmount such Difficulties, as other Persons would have sunk under.

It would exhaust the Patience of the Reader if I should further pursue the Altercation between the Court and the Council, respecting the Bailing of the *Begum* and the other Defendants, or should comment on the loose, vague, and unsatisfactory Language of those Affidavits on which the Court was at last induced to bail them. The *Begum* was bailed in 5000 *Rupias*, or about 1,500*l.* Sterling. Upon being bailed the Defendants had Time allowed them till the Thirtieth of *June* to plead the Indictment.

On the Twenty-ninth a Motion was made to quash the Indictment for Insufficiency. The Objections taken by the Defendant's Counsel were, 1. That the Indictment did not charge the Instruments to be Deeds, purporting to be delivered; that Delivery was essential to a Deed; therefore these were not Deeds within the Statute.

2. That the Prisoners could not plead to the Indictment, because the Word *Felonies* was omitted in four of the Counts, some Counts therefore the Counsel observed were for a Felony, some for a Misdemeanor, to which therefore were they to plead? Or what Judgment was to be given? He asserted that the Defendants could not plead; that no Judgment could be given; and that the Indictment ought therefore to be quashed.

That the Supreme Court, and they proceeded in consequence to give Judgment.

That the Statute did not extend to this Country; that there is an express Provision in it, that it should not extend to *Scotland*; and that the Inference fairly to be drawn from thence was, that the Legislature intended it should be limited to *England*. *See 4. Mod. 225. 2. P. Wm 75. Com. 264. Dougl. 32.*

It was answered in Reply, that no *English* Deed in the Body of it purports to be delivered; that the Attestation on the Back of it is no Part of the Deed; that a Deed would be good, although the Attestation, purporting that it was delivered, was torn from a Bond, or erased from the Back of a Deed written on Parchment: That it was not more necessary to state, that it purported to be delivered, than it would be to state in an Indictment for Forging a Will conveying Lands, that it had the Number of Witnesses required by the Statute. That in this Case *Deed* is the Word used in the Statute; that the Word *Deed*, implies all the Ceremonies of Execution essential to a legal Deed; that if the Instrument stated in the Bill, did not turn out to be such a Deed, then the Evidence for the Crown would fail; but that it was a Fact to be tried by Evidence, upon the Ples of not Guilty; and that it would then, and could not properly till then appear, whether it was not a Deed within the Statute, as it was charged to be. That the Deed set out was in the *Perfun* Language; that no Translation of it was in the present Stage of the Business before the Court, and that at present no Inference could be drawn from the Wording of the Deed. That in the Case of the *King* and *Nantowar*, who was hanged upon this Statute, the Indictment does not charge the Bond to purport to be delivered; that it was true, the Custom of Charging a Bond to purport to be delivered, had crept into Use, as appeared by printed Precedents, but that the Omission of it by no Means vitiated the Indictment.

That it was also true, the Word *Felonice* is omitted "with willingly Acting and Assisting in Forging." &c. that it was an Error of the Indictor, but did not vitiate the whole Indictment, because each Count is a separate Indictment; and that if the Counts, in which the Word *Felonice* was omitted, were bad, they only were so; but that the Defendants must still plead to those Counts, which charge a Felony, even supposing others to be for Misdemeanors, because the Misdemeanor merges in the Felony, but that no Count in this Indictment was for a Misdemeanor; because

they all concluded *contra formam Statuti*; which Statute makes the Fact charged in those Counts Felony; the Counts were therefore good; the Omission of the Word *Felonice*, was cured, by the Conclusion of the Count *contra formam Statuti*. That this Indictment was not bad, as appears by the Case of *Nuncomar*, when the Count on the Bond is *Mutatis Mutandis* the same as this, because a Bond is a Deed to which Delivery is essential; but that at any Rate the Objections were premature; that it is unusual to quash Indictments in Cases of this Nature; but that Advantage might be taken of them in Arrest of Judgment.

In Answer to the Objection of the Statute not extending to this Country, it was urged, that the Town of *Calcutta* and the Factories were governed by the *English* Laws, but that the Court had already decided on that Point in the Case of *Nuncomar*, and made all Argument unnecessary. The Chief-Justice interrupted the Advocate for the Prosecution, in the Course of his Argument, by asking him, if he spoke from the printed Trial of *Nuncomar*; and on being answered in the Affirmative, he replied, that the Indictment must be false printed in that Respect; and on the subsequent Day he said, that he had looked at the printed Trial, which was right; but that *Nuncomar* had been hanged on the Counts for Forging a Writing obligatory, and not a Bond. Mr. *Lawrence* requested to be allowed to argue from the Case of *Nuncomar*, that the present Indictment was good, as *non constat* on which Count the Petit Jury gave their Verdict; and that it appeared from the Charge delivered to the Jury by the Chief-Justice annexed to the printed Trial, that he had directed them to find the *Rajah* Guilty, on one of those Counts in which it was charged as a Bond. And on Mr. *Lawrence's* Offering the Trial to the Chief-Justice for his Inspection, he said, it mattered not; that if it had been so, he was not ashamed to avow, that it was a Mistake.

The Court took Time till the fifth Day of *July* to consider of the Motion, on which Day the Judges unanimously acquiesced in their Judgment, to admit the Objections, and quash the Indictment; and the Defendants were accordingly set at Liberty; with a Conviction left in the Minds of the Prosecutors, that any further Attempts to bring the Defendants to Justice would be nugatory. Besides, independant of other Circumstances, the greater Part of the Witnesses intended to be produced on the Occasion

were

were Persons of considerable Rank and Fortune, constantly resident at *Paina*, four hundred Miles distant from *Calcutta*;—it was impossible to prevail with them to remain a longer Time at *Calcutta*, or to visit that Place a second Time. The Change of Climate, the Fatigue of Travel, and the Inconvenience which their private Concerns must sustain from their Absence, were Objections, which all the pressing Solicitations of the Persons most interested in their Testimony was unable a second Time to surmount. All Ideas, therefore, of a further Trial were soon abandoned.—

If any Thing were yet wanting to convince the Reader of the Confidence, which the Defendants and their Attorney had, in the Bias of the Court, in their Favour, and the Security in which they considered themselves from any Consequences of the criminal Action, the following Instance will surely suffice. After the Bill had been found, and while the Fate of the Indictment was yet pending, a Civil Action of Trespas was carrying on by *Nadara Begum* against Mr. *Law* and the Gentlemen of *Paina*, for further Damages, on Account of the same Injury for which the *Cowzee* and *Misfies* had been sued, and were then in Execution; and they were served with Process by her Attorney during this very Interval. This Suit has since been carried on against them, and Judgment given in her Favour, in the Term which followed the Sessions we are speaking of, and Damages to the Amount of fifteen thousand *Rupers* (or about fifteen hundred Pounds) have been lately adjudged to her; but, as the Decision of this Cause will be the Subject of an Appeal to the King in Council, it is improper, as well as unnecessary, to say more of it in this Place.

Another and striking Circumstance is, that after the Indictment had been quashed by the Court, although it had received every Sanction, which it could receive, in the Stages it had been suffered to go through, by having been found by the Grand Jury; and although it had never been suffered to come to Trial before the Petit Jury; yet the Council for the *Begum*, were not ashamed to move for a Copy of the Indictment, in Order to commence an Action against her Prosecutors for a malicious Prosecution. The Court have neither granted, nor hitherto refused, the Motion, but keep it for the present suspended *in terrorem* over the Heads of the *Paina* Gentlemen.

Nothing could have lessed the Concern and Indignation with which this Decision was received by all Orders of Men in *Bengal*, but the Opinion,

which had been formed from the previous Conduct of the Bench, that such would be their Determination.

Here were Persons charged with a Crime of the most alarming Tendency to the Community, by which innocent Men have been deprived of their Property and personal Liberty, a Crime which in *England*, under the strongest Circumstances of Compassion, and when not complicated with similar Injury to Individuals, had been deemed unworthy of the Royal Mercy; which even the *Judges themselves* had in the Case of *Nuncemar* thought of too bad Example to suspend the Execution of the Sentence, until the Royal Pleasure could be known; yet these very Judges take upon themselves to prevent the Trial of the present Offenders.

Whether or not the Judges are justified by Law, in having refused to grant Warrants for the Commitment of the Parties, after the Bill against them had been found by the Grand Jury, and whether they were justified in admitting them to Bail at all, or in such trifling Sums, when they stood charged with a capital Felony of such Enormity, are Questions which the Writer leaves to the Discussion of the learned in the Law in *England*, as much better able to decide on them than he is. He ventures only, on such a Subject, to intimate his Belief, that no Precedent, or parallel Instance, can be adduced.

The Grounds on which the Indictment has been quashed, afford in themselves Matter of the most serious Alarm to the Community.

In Addition to the Arguments adduced by the Council for the Prosecution, from the Case of *Nuncemar* quoted above, viz. that *Nuncemar* was condemned for Forging a *Persian* Bond, not purporting to be delivered: The *Persian* Papers, charged in the Indictment as Deeds, had been called Deeds, throughout the whole Course of the Civil Trial, and are constantly so termed by the Chief-Justice in the Judgment of the Court, which he has recorded with the Governor-General and Council. As Deeds they are admitted in the Supreme Court at *Fort-William*, to be the Foundation of Property, and to convey a Property of more than Thirty thousand Pounds; yet when charged as such in the Indictment, they are declared to be no Deeds, and the Indictment quashed on these Grounds.

But allowing this Objection to be valid in Law, which is a Point the Writer cannot pretend to decide on, still another Question arises. The Law

of *England* if applied to Cases in this Country ought to be applied wholly, or not at all. If the Papers called Deeds, in the Civil Action, were not capable of being brought within that Description in a Criminal Indictment, they ought not to have been received as Evidence in an *English* Court of Law, or admitted as Instruments capable of conveying Property.

The Object of the Laws against Forgery is surely to prevent Fraud; but here is a Door open for the grossest Impositions, since whoever shall forge Papers, in the native Languages of this Country, not capable of being brought within the Description of a Criminal Indictment, may under such a Precedent recover Property on them in the Supreme Court, without any Hazard from Detection or Fear of Punishment.

But allowing even that the Indictment was defective (and the Chief-Justice declared repeatedly, the Court knew there was a fatal Objection to it, from the Beginning) still it is apprehended, that it was the Duty of the Judges, as Magistrates appointed to watch over the Peace of the Community, in a Case of such Enormity to have pointed out the Defects to the Prosecutors, and to have recommended an Amendment of the Bill; or at least not have dismissed the Grand Jury, as they did, before they pronounced on the Fate of the Indictment, and thereby deprived the Prosecutors of any further Opportunity of amending their Bill, leaving the Parties to escape for ever from the Researches of Justice. Are the most dangerous Criminals to the Community to escape, and innocent Men to perish in Prison, because a Clerk of Indictment may be ignorant and uninformed? This were indeed to make the Course of Justice depend more on the Observance of Forms, than on Attention to Right. But, in the Case of *Nuncmar*, his Indictment was frequently brought into Court, and amended under the Directions of the Bench; and in the very Sessions we are speaking of, a defective Bill was recommended by the Judges to the Prosecutor for Revival, and was actually brought a second Time before the Grand Jury, and after such Amendment by them, found a true Bill.

Let us now pause one Moment from our Narration, to consider the Conduct of these very Judges in the Case of *Maha Raja Nuncmar*, and that which they observed in the present Instance.

Before they had been six Months in this Country, and before the Purpose of their Coming could be understood by the People, a Native of the

the highest Rank and Cast, who had served the Office of Prime Minister under a former Government, is charged before them as individual Magistrates, not sitting as a Court, with a Commission of a Forgery, after nine Years before their Arrival, a Crime not capital by his own Laws. On this Charge the *Rajah* is immediately committed to the common Jail, without Regard to his Rank, or Feeling for the Prejudices of his Religion, where he is treated with such a Degree of Rigour, as to occasion the Interposition of three Gentlemen of the Supreme Council in his Favour. He is tried on a Statute, which one of the Judges declares does not extend to this Country, condemned, and without leaving Time, for the Interposition of the Royal Mercy, in so new and uncommon a Case, the Sentence is executed. The Sum meant to be fraudulently acquired by this Forgery is 40000 *Ruppes* or about 4000 Pounds Sterling, and affects no Individual further than in the Loss of that Property.

Now let us compare this with the Case of the *Begum* and her Accomplices. Here a Woman of no superior Rank and five other Persons, four of whom are to the greatest Degree low and illiterate, are charged with Forging two Deeds, to vest in the Woman the whole Estate of her deceased Husband, to the Prejudice of the Heir at Law, and of publishing these Deeds, knowing them to be forged, in the Court itself. The Forgery, if true, must have been committed near three Years, after the Sitting of the Court, and after the Law, against that Crime, had been promulgated in so exemplary a Manner, in the Case of *Nuncomer*. And in Aggravation to that Charge, the Deeds, if not genuine, had been supported throughout the Course of a long Trial, in the Face of the Court itself, by the grossest Perjury. She obtains a Judgment under these Deeds to the Amount of more than Thirty thousand Pounds Sterling, against the Heir at Law of her deceased Husband, and three Magistrates, who by such Sentence, without any Crime on their Parts, are utterly ruined with their Families, and their Persons doomed to perpetual Imprisonment. Yet when Gentlemen, of unsullied Honour and the most respectable Characters, stand forth, to bring the Persons, who have been the Cause of such grievous Injuries to Individuals, and of Evils so dangerous to the Community, to public Justice; they are thwarted, opposed, and over-ruled in every Attempt by those, whose Duty it certainly was to countenance and support them.

them. Not only the Persons ^{accused of} such Enormities are saved by the Hand of Power, or by the Chicanery of legal Exceptions, from any Thing that bears the Appearance of Punishment or Restraint, but even a Trial of the Fact charged on them is shut out, and they are left at full Liberty, under a strong well-grounded Suspicion of Forgery. Lest any Exception should be taken from the Indictment being laid on a Statute, which did not extend to this Country, as was declared by the Council for the *Begum*, it ought always to be remembered, that this was no Error of the Prosecutors, their Attorney, or Council. The Precedent was established by the Judges themselves, to which therefore the Prosecutors conformed, as the surest Ground to take in a Case which was to be tried before them. But let the impartial Reader place himself in the Situation of his Fellow-subjects in *Bengal*, and ask himself what must be his Feelings, and what his Sentiments of the State of Justice in a Country, where a Man is capitally convicted and executed on a Law, which an able and learned Advocate afterwards declares in the Face of the Judges themselves had no Force where it was applied? If other Facts were wanting, or if there were no other Matters of real Grievance and Complaint, these are surely sufficient to unite all Orders of Men in *Bengal*, in the Representations they have made, against the Powers exercised by the Judges. The Proceedings in this Cause alone, are sufficient to prove, that the Apprehensions for the future, founded on the past, are just and well-grounded.

F I N I S.

a strong well-grounded suspicion against the Government. I had my knowledge about
 that changed on this is that one, and they are not as I have been told.
 seems the appearance of Parliament on this, but even a great many
 of Town, or by the Government of local, and they are not as I have been told.
 the Government with their knowledge of the Government, and they are not as I have been told.

10. The following information is provided for the year ended 31 December 2014:

Ground to take in a C&G which was to be filed before then. The
Geographical Reader place I could in the Division of his letter to the
Bureau, and the Bureau was told in his letter, and was in
means of the State of Iowa in a County where a Man is easily con-
sidered and treated of a few weeks ago and I would be interested

Matters of real estate and Commission, and are fully sufficient to make it was applied; if other facts were wanting, or if there were no other words declared, which are &c.

"I had better over to you the
"my knowledge and experience
"test, and when you have finish-
"I have made you Master of my El-
"in the place of my own son -
"brother's son and as such now
"father on the part, are well-grounded.
"this subject now. You are well."

to the English Government, and to every one that he established as his son and heir, and he might receive a Kingdom from the Government General. Now in this

[illegible]

N U M B E R 1

Council of Revenue at PATNA.

JANUARY 2, 1776.

RECEIVED an *Arzee* from *Be-
bader Khan Mirza Shabbaz Beg
Khan*, sent for me from *Cabool*, and
thus addressed me: "You are my
" Brother's Son, and as such now
" in the Place of my own Son: I
" have made you Master of my Ef-
" fects, and, when you have suffici-
" ent Knowledge and Experience,
" I shall deliver over to you the
" Charge of every Thing, and go
" myself to *Cabool*." It is known
to the *English* Gentlemen, and to
every one, that he established me
as his Son and Heir, and I accord-
ingly received a *Khelaut* from the
Governor-general. Now the Wife
of the late *Khan*, being instigated
by interested People, for their own
Purposes, has removed and secre-
ted the Effects. I request, therefore,
that you will favour me with a
few

few *Hircarrabs*, to prevent the Removal of the Goods, and to cause such as have been carried away to be brought back, and that you will give Directions to the *Cawzee* to ascertain my Right, and acquaint you therewith.

AGREED, that Directions be given to the *Cawzee* and other Law-Officers, according to the above Petition, to take an Account of the Estates and all other Effects the Deceased died possessed of, to cause them to be collected together, and placed under their joint Charge, together with *Bebader Khan* and a Person, on the Part of the Widow, and that they do allow the Shares of each Claimant, strictly adhering to the *Mussulman* Law of Inheritance, and give in to us an Account of their Proceedings.

JANUARY 20, 1776.

The *Cawzee* and *Musties* now deliver in the following Report on the Right of Inheritance, claimed respectively by the Widow and Nephew of *Shabbaz Beg Khan*, to his Estate and other Property.

REPORT of the *Cawzee* and *Musties* appointed on an Enquiry relative to the Right of Inheritance, claimed respectively by the Widow and Nephew of *Shabbaz Beg Khan*, to his Estate and other Property.

BEHADER KHAN alledged, that he was the Nephew and adopted

APPENDIX
NUMBER I.

EXTRACTS from the
Council of Revenue

JANUARY 20, 1776.

RECEIVED at the Office of the
Secretary to the Council of Revenue
Khan, sent for me from the
this addressed me: "You are my
" Brother's Son, and as such now
" in the Place of my own Son: I
" have made you Master of my El-
" fects, and when you have in-
" creased Knowledge and Experience,
" I shall deliver over to you the
" Charge of every Thing, and go
" away." In this Translation there are
some trifling Inaccuracies; the prin-
cipal, however, are these:—That the
Words *Heba Nama* and *Ektar Aum*
in the Original, which signify Deed
of Gift and Deed of general Decla-
ration, have been rendered Will and
Deed of Gift. Terms of Law are
not well understood in any Language,
except by the Professors; they seldom
occur:

quest had the Attestation of the Law-Officers, and was written in the usual Form; that therefore, had a Bequest been made in Favour of the Widow, the Deceased certainly would have made it in the Manner before described. *Behader Khan* further observed, that had the Widow possessed any genuine Deeds of Gift from the Deceased, she would have produced them within three Days after her Husband died; but those she had now in her Possession were forged subsequent to the Decease of her Husband, and that he relied on the Justice of the Gentlemen to punish those who were concerned in the Forgery of them, and to prevent the Widow from depriving him, by their Means, of what was his just Inheritance. On the Twenty-seventh of *Jecade*, one thousand one hundred and ninety *Hejry*, *Cojab Zekeriab*, the Representative of the Widow, deposed, That the Deceased, on the tenth of *Ramazan*, wrote and presented the 'Will' aforesaid to the Widow; but that he would not say, whether the Will was yet in the Possession of the Widow, or had been afterwards destroyed; and that on the Eleventh of the same Month and Year the Deceased wrote and presented the 'Deed of Gift' aforesaid to her; that he would enquire and report to us if the Will was yet forth-coming. The Day following both the 'Will' and 'Deed of Gift' aforesaid were produced, attested under the Seals of *Cojab Zekeriab*, *Ghyrut Beg*, *Enaurjut Ulla Beg*, *Cowzee Mobuzzum*, and *Mabomed Ewaz Enaurjut*. *Ulla Beg*, who was then present, was asked as to the Authenticity of the 'Will', he

* *Deed of Gift.*

* *Deed of general Declaration.*

* *Deed of Gift and Deed of general Declaration.*

* *Deed of Gift.*

APPENDIX. NUMBER I.

5

he declared it to be a true one, and to have been written out by *Naas Aly*: *Cojab Zekeriab* spoke to the same Purpose. On the last Day *Cojab Zekeriab* represented to us, that, besides the *Will*, the *Deed of Gift*, and Marriage-Settlement, he had no other Papers in his Possession on the Part of his Constituent touching the Estate of the Deceased. Again, on the same Day *Cojab Zekeriab* further informed us, that the Papers above-mentioned were the Grounds, on which the Widow founded her Claim of Succession to the Deceased's Inheritance. The Marriage-Settlement was then called for: *Cojab Zekeriab* went for it to the Widow, and returned soon after, acquainting us that it should be brought four or five *Gharries* hence. A little While after it was again demanded, and the *Cojab* replied, he was in Search of it. We then informed him, that, if the Paper was forth-coming, it certainly could be produced that Day; that we should continue sitting till Twelve o'Clock at Night, in Order to afford him Time to find it; but that we should wait no longer; and that, if it was produced afterwards, it would not be admitted. Accordingly, we remained sitting till Twelve, but the Paper was not produced. *Cojab Zekeriab* told us, he could not find it that Night, but would bring it to us the next Day; and assured us, he did not recollect the Amount of the Portion settled in it. *Syed Zulfecant Aly*, *Vakeel* of *Behader Khan*, deposed, that the *Will*, and the *Deed of Gift* aforesaid, had been

Deed of Gift and Deed of general Declaration.

Deed of Gift and Deed of general Declaration.

been forged after the Death of the Deceased. He said, that, soon after the Decease of *Shabbaz Beg Khan*, there was another forged Paper produced, attested with the Seal of *Syed Mahomed Khan*, a Relation of *Arab Aly Khan*, and desired to know what was become of that Paper. He alleged these two Papers, the "Will" and the Deed of Gift, to have been forged, subsequent to the other Forgery, and that Means were taken to procure People, who could prevail upon themselves to witness them; that Men of Character had refused it; Witness *Meer Udden Selabut Khan* and *Hakeem Haudy Aly Khan*; that *Berut Beg*, one of the Witnesses both to the "Will, and Deed of Gift, had acquainted *Malcoom*, an Armenian, a little While after the Death of the Deceased, that *Shabbaz Beg Khan* had left behind him no Paper of Bequest to any one.

Selabut Khan, being present, was interrogated, and deposed, that about twelve Days ago *Cojah Zekeriah* came to him, and desired him, as he had a Seal, to attest a Paper; that he replied, he had not his Seal about him, and did not therefore attest the Paper. Notes were then sent by us to *Syed Abmud Khan*, *Meer Ameer Udden*, and *Malcoom*; the Bearer of the first returned with a verbal Answer from *Meer Ameer Udden*, acquainting us that he did not affix his Seal to the Papers alluded to. When we were dispatching the Notes, *Cojah Zekeriah* observed, that the Seal of *Syed Abmud Khan* had been affixed to the *Wusfyout Nama*, or Paper of Administration, which he, *Cojah Zekeriah*, had since

been declared to be a true one, and to have been written out by *Meer* (the *Cojah Zekeriah* spoke to the *Meer* on the last Day of the *Cojah Zekeriah* requested to us, that, besides the "Will, the Deed of Gift, and Marriage-Settlement of Gift, and Marriage-Settlement of Gift, he had no other Papers in his Possession or Part of his Possession. *Deed of Gift and Deed of general Declaration.* Again, on the last Day of the *Cojah Zekeriah* further informed us, that the Papers above-mentioned were the Grounds, on which the Widow founded her Claim of Succession to the Deceased's Inheritance. The Marriage-Settlement was then called for: *Cojah Zekeriah* went for it to the Widow, and returned soon after, saying, that he should be brought four or five Copies of it. A little While after it was again demanded, and the *Cojah Zekeriah* he was in Search of it. We then informed him, that if the Paper was lost coming, it certainly could be produced that Day; that we should continue sitting till Twelve o'Clock at Night, in Order to afford him Time to find it; but that we should wait no longer; and that if it was produced afterwards, it would not be admitted. Accordingly, we remained sitting till Twelve, but the Paper was not produced. *Cojah Zekeriah* told us, he could not find it that Night, but would bring it to us the next Day, and attend us, he did not recollect the Amount of the Portion settled in it. *Cojah Zekeriah* also, *Cojah Zekeriah* deposed, that the "Will, and the Deed of Gift, *Cojah Zekeriah* had been

since torn. A little after he said, it was upon the *Soorut Haul* that *Syed Abmud Khan's* Seal had been affixed, which also he had since destroyed. *Cojab Zekeriab* added, that, after the Death of the Deceased, he carried the ' *Will* to *Kakun Haudy Aly Khan*, urging he had no Acquaintance with the Deceased's Will, had declined affixing his Seal to it; upon which he, *Cojab Zekeriab*, carried the ' *Will* back with him. *Syed Abmud Khan's* Note arriving, purporting that he had affixed his Seal to an attested ' *Will*, but had no Knowledge otherwise of any Papers of the Deceased. *Cojab Zekeriab* affirmed, the Seal of *Syed Abmud Khan* had been affixed to a Copy of the Will; whereupon a second Note was sent to him, desiring to know whether his Seal has been affixed to an Original, or a copied ' *Will*, to which he replied, that after the Death of the Deceased, in the Month of *Zerauda*, he had affixed his Seal to an original Paper; that he did not remember at present, who were the Witnesses who had attested the Paper, but that, if he could hereafter recollect their Names, he would not fail to inform us. *Malcoom*, in Reply to our Note to him, affirmed, that he had heard from *Gbirut Beg*, that the Deceased had not left behind him any written Will whatever; and the *Peon*, who carried the Note to him, said, he had been further informed from *Malcoom*, that *Gbirut Beg* told him the ' *Will* had been written after the Deceased's Death; upon which *Cojab Zekeriab* observed before us, that what had been affirmed by *Malcoom* was true. On the

Third of November, 1850, John Sebastian ac-
counted us that the Marriage-
Settlement of the Widow was not
made, and that no one knew what
was become of it. On the same
day, the same person, whom I met

Deed of Gift.

Deed of Gift.

Dead of Gift

Dead of Gift.—It appears from the fact that the Will and Dead of Gift are not delivery of Credit and from many Circumstances that the Marks of being ignorant as the content of every Relations of Credit & Debt is not in fact as an Error that of Dead of Gift: but as before mentioned, a sort of willful ignorance, to secure Succession to Intestate. As the Marriage-dissolution had not been produced, and as Gift & Debt founds the Dowry Claim of Succession, and the Debt together with the Dowry, Dead of Gift and the Settlement as in fact, every thing used for the Benefit

which

APPENDIX NUMBER II.

9

which does not compose a Part of the Inheritance, all the Deceased's Property be divided into four Shares, whereof three should be given to *Behadur Khan*, his Father being the legal Heir of the Deceased, and himself the adopted Son; and the remaining one to *Nadara*, the Deceased's Widow.

The original Wills are given in the Translation in the Body of the Narrative, with an Explanation.

(L. S.)

Cauzee Saadi.

(L. S.)

Golaum Muckdoom Musti.

(L. S.)

Beckut Ulla Musti.

(L. S.)

Carrum Ulla Musti.

NUMBER II.

In the Supreme Court of Judicature at Fort-William in Bengal.

Nadara Begum } PLAINTIFF.
Between *Behadur Begum* }
 Cauzee Saadi } DEFENDANTS.
 Musti Berratuslab }
 Musti Golaum Muckdoom }

MAHOMED COSSIM maketh Oath, that he this Deponent is well read in and conversant with the *Mahomedan Law*, the Study and Practice thereof having been the Employment of this Deponent from his Youth: that this Deponent is a Doctor of the *Mahomedan Law*, and held the Office of *Naib* to *Sudder ul Huc Khan*, the *Darogah* or Chief Judge of the *Sudder Adaulut Nizamut*, or the Supreme *Mahomedan Court of Justice* within the Province of Bengal for the Space of three Years and upwards: that this Deponent performed the Duties of such Office, the principal Part of which was to examine the Proceedings of the Provincial Courts of *Pboudarry Adauluts* in Bengal, and to prepare Reports thereon for the said *Sudder ul Huc Khan*, together with the *Justices* and *Members* of the said Court, to collect Authorities from the *Mahomedan Law Books* to guide the Determination of the said Court of *Sudder Adaulut* in the Reversal or Confirmation of the *Fetwas* or Decrees of such Provincial Courts

Courts of *Pbouxderry Adaulut*; and this Deponent further saith, that the Paper hereunto annexed in the *Persian Language*, (and to which the Seal of this Deponent is affixed, contains Questions on certain Points of the *Mabomedan Law*, and Answers thereto; which respective Answers this Deponent verily believes to be conformable to the *Mabomedan Law*, and that the Authority referred to by such Answers is faithfully extracted from Books of allowed Authority among the *Mabomedan Law Doctors*.

Sworn at *Calcutta* this 4th Day

of *March*, 1779, before me

(Signed) J. Hyde.

FOR T-WILLIAM, April 13, 1779.

QUESTION.

SHOULD *Zeinaub* claim certain Effects stating this Reason, viz. That *Zeid* her Husband gave all of them to her, and afterwards prefer an absolute Claim to them as being her Property; is such a Claim, according to the Law, fit to be heard or not? Explain, and you will be rewarded.

ANSWER.

It is not fit to be heard. In the *Corakbannee* the following Passage is transcribed from the *Fuzwanee Ibaanut*. Viz. should a Claimant claim Property stating a Reason, and afterwards prefer an absolute Claim to the same Article, his Claim will not be admitted. In the same Book the following Passage is transcribed from the *Fattawee Khanee*: He claimed a Property stating a Reason; and afterwards preferred an absolute Claim of Property; his Claim is not to be admitted. *Shems Agha Surruklee* declared this in express Terms in the *Dawee Jamee*, and this is the Rule for

Zeinaub and Zeid are two fictitious Names, and used in stating a Question; the former to denote a Woman, and the second to denote a Man. The Persian Word is Unward, which comprehends Houses and all other valuable Articles.

Claims, according to the Mussulman Law, are of two Sorts; the one called Dawee Milk be Subbah, a Claim with the Statement of a Reason; as such a thing is mine, because another Person has given it to me. The other called Dawee Milk Mutluck, or without assigning a Reason.

MACHMED COSSIM MACHMED COSSIM MACHMED COSSIM
read in and converted with the
Practice thereof having been the
Youth: that this Deponent is a Doctor
the Office of *Nazir* to *Shaher al* the
Said *Shaher al* or the *Sy*
within the Province of *Shaher al* for the
that this Deponent performed the
Part of which was to examine the
of *Shaher al* in *Shaher al* and
said *Shaher al* in the *Khan*, together with
said Court to collect *Amud* in
guide the Determination of the *Shaher al*
verbal or Confirmation of the *Shaher al*
Court

of them at the Meeting when the Present was made, without the Leave of the Donor, is it valid or not?

ANSWER.

A Gift, without taking Possession, is not valid, and not taking Possession at the Meeting when the Present is made, without the Leave of the Donor, is not valid. *Maaden Mussabil*. A Gift is not valid without an *Ijaib*, an Acceptance and taking Possession. The same Book : The Prophet has said, a Gift is not valid without taking Possession. *Ibraahim Sbaay*. The Conditions of the Validity of a Gift are three, *Ijaib* Acceptance, and taking Possession. *Fatawaat Allumgeres*. If the Present be taken Possession of after Retiring from the Meeting, the taking Possession is not valid, either according to express Law, or to Equity : And if the Article given does not appear at the Meeting, and the Acceptor goes and takes Possession of it, should this be done with the Leave of the Donor, the Gift is valid according to Equity : But, if it should not be done with his Leave, it is neither valid according to express Law or Equity. *Hiddie*. If the Acceptor takes Possession at the Meeting when the Present is made without the Directions of the Donor, the Gift is valid according to Equity : But, if the Acceptor should take Possession after Retiring from the Meeting, the taking Possession is not valid ; because taking Possession transfers the Property from the Donor ; and, until Possession is taken, the Property remains in the Donor ; therefore, after Retiring from the Meeting,

ing, it is not allowable to take Possession without the Leave of the Donor.

QUESTION.

Should Zeid give to his Wife by one ^a Deed Articles which are his Property, and *Jugbars* which are not Property; is this Gift valid or not?

ANSWER.

It is not. *Futtawee Allumgerree*. It is a necessary Condition in the Case of a Gift, that the Donor be capable of giving; and, in Order to be capable of giving, the Donor must be free, in his Senses, of Age, and the Proprietor of the Article given. Should the Donor be a Slave, or a *Muckatil*, or a *Mid-dubba*, or an *Umwallid*, or should there be a ^a Portion of Slavery in the Person of the Donor, be a Minor, or out of his Senses, or should he not be the Proprietor of the Article given; in all these Instances the Donor is incapable of giving. In the same Book, it is impossible for one Person to constitute another Person Proprietor of what is not his own Property; and, as the said Gift is invalid in some Parts, it is invalidated in the Whole. *Sberra Veskia*. A *Haba* or Gift is a Knot or Engagement of Favour. *Ashbab Welsa Nazain*. If a Knot or Engagement be invalid in some Parts, the Whole is invalidated.

QUESTION.

Should Zeid give two of his Houses to his Wife, and one be employed in containing the Property of the Donor, is this Gift valid according to Law or not?

ANSWER.

It is not valid. *Futtawee Allumgerree*. If the Donor said to another Per-

Person, I have given you these two Houses, and one of them is contained by the Donor, the Gift of both is invalid.

QUESTION.

^a Engagements are called *Allood* or *Konai*, such as a Sale, a Gift, &c. and the Persian Word translated *Deed* means literally a Knot.

ANSWER.

It is not valid. In the *Futtawee*, the following Passage is transcribed from the *Umwallid*, which is not inserted from *Umwallid*. It is not allowable for a Slave to give to his Wife, or a ^a In the Chapter of Slavery is mentioned, that there are some allegations of Slavery; *Mushkur* one with whom his Master has entered into a written Engagement, that he shall be free after paying a certain Sum of Money; *Mushkur* one to whom his Master has granted Freedom after his (his Master's) Death. *Umwallid*, or a Slave, who has turned a Child to his Master, and Persons under these Circumstances have sometimes Advantages, which do not fall to the Lot of complete Slaves.

^a Suppose that *Burfa* are Partners of a Slave, and two give him his Freedom, he is then One-third of a Slave, that is to say, he is free two Days, and a Slave one Day.

(Signed)

H. V.

Person, I have given you these two Houses, and one of them is employed by the Donor, the Gift of both is invalid.

QUESTION.

Should Zeid give a House in which he has Property to his Wife, and both live in the House at the Time of the Gift, and afterwards, is this Gift valid according to Law or not?

ANSWER.

It is not valid. In the *Fatawa Allamiya*, the following Passage is transcribed from the *Muntucka*, where it was inserted from *Abdoo Hoss*. Viz. It is not allowable for a Man to give to his Wife, or a Wife to her Husband, or to give either of them a House in which they both live. The same is written in *Zakariya*. *Question*. Is the Gift of an Article, which does not appear at the Time of giving, valid or not? *Answer*. It is not valid. *Fatawa Allamiya*. It is not allowable to give any Thing, which does not appear at the Time of giving.

A true Translation,

(Signed) Henry Kestner.

QUESTION.

In Case Zeid has relinquished a certain Property, and died leaving a Widow and other Heirs, and the Widow of Zeid claims all the Estate as her Property for herself under an *Ekrar* *Aum* of her said Husband: According to the *Mussulman Law*, is this Claim well founded or not?

ANSWER.

ing, it is not allowable to take Possession without the Leave of the Donor.

QUESTION.

Should Zeid give to his Wife by one Deed Articles which are his Property, and Yehya which are not Property; is this Gift valid or not?

ANSWER.

It is not. *Fatawa Allamiya*. It is a necessary Condition in the Case of a Gift, that the Donor be capable of giving; and in Order to be capable of giving, the Donor must be free, in his Senses, of Age, and the Proprietor of the Article given. Should the Donor be a Slave, or a Madman, or a Mute, or an Insane, or should there be a Portion of Slavery in the Person of the Donor, he is not, or out of his Senses, or should he not be the Proprietor of the Article given; in all these Instances the Donor is incapable of giving. In the same Book, it is impossible for one Person to constitute another Person Proprietor of what is not his own Property; and, as the said Gift is invalid in some Parts, it is invalidated in the Whole. Always Notice. A Sale or Gift is a Knot or Engagement of Favour, and a Knot or Engagement of Favour is always valid. It is a Knot or Engagement, be invalid in some Parts, the Whole is invalidated.

QUESTION.

Should Zeid give to his Wife, and employ her in carrying the Property of the Donor, a *General Declaration*.

(Signed)

H. V.

APPENDIX. NUMBER II. 191

ANSWER.

It is not well founded. Thus it is written in the *Fetwas* (Decrees) of *Abrabim Shabee*. A Claim of Property under an *Ekrar* is not valid. According to the Opinion of the Generality of Doctors, whom may God favour! This Doctrine is in the *Abuzeza*, and also in *Zekeeria*, where it is written. But *Ekrar* is not a proper Foundation of Property; and a Claim of Property under that, which is not a proper Foundation of Property, is not well founded: And, according to the Decrees of *Hemadee*, an *Ekrar* is not a Foundation of Property.

QUESTION.

In Case *Zeid* having in his Possession certain Lands and other Effects, not Lands, belonging to him, makes an *Ekrar* for the said Property to *Zeinaub* his Wife: According to the *Mussulman* Law, and by Means of this *Ekrar* of *Zeid* for the said Property, is the same the Property of the said *Zeinaub* or not?

ANSWER.

It is not. Thus it is written in *Zekbeira*: A Person's Property and Effects do not pass to another, except by Reason of his being constituted Proprietor; and, in *Fuzool Emadee*, an *Ekrar* is a Notice, and not a Mode of constituting a Man Proprietor.

QUESTION.

In Case *Zeinaub* prefers a Claim to certain Things in this Manner, that these Things are her Property, because the Possessor had made an *Ekrar* in her Favour for the said Things: According to the Books, is this well founded or not?

ANSWER.

It is not. Thus it is laid down in the *Fetwas* likewise, that if a Claim be preferred to a Thing which is in the Possession of a Person, that this Thing is mine, because the Possessor made an *Ekrar* of it in my Favour; or that a Claimant has for Money, and assigns a thousand *Dukans* are due from him to me, because he had made an *Ekrar* of that thousand *Dukans* in my Favour; or assigns at first, that this Thing is mine, or that the Person made an *Ekrar* thus, that so many *Dukans* are due from him to me: This Claim is not valid by the Opinion of the Generality of Doctors. Thus it is written in the *Abuzeza* likewise.

QUESTION.

In Case *Zeinaub* in the Claim of certain Effects prefers an *Ekrar* in her Favour of her Husband for the said Effects, without declaring the Grounds: According to the Law, is this Paper rejected, and is the Claim of the said Woman false or not?

ANSWER.

This Paper is rejected; and the said Woman's Complaint is false. Thus it is written in *Abuzeza*: A Man's *Ekrar* of Effects, without explaining the Grounds, then certainly that Paper will be rejected according to the Generality of Doctors. Men, because certainly, if the Effects had been his Right, he would therefore have set forth the Grounds, when he assigns giving the Reasons, and has accounted for the Claim of an *Ekrar*, it is understood, that his Claim is false.

ANSWER.

It is not. Thus it is laid down in the *Futtawee Allungereet*, that, if a Claim be preferred to a Thing which is in the Possession of a Person, that this Thing is mine, because the Possessor made an *Ekrar* of that Thing in my Favour; or makes a Claim on him for Money, and asserts, that a thousand *Deebans* are due from him to me, because he had made an *Ekrar* of that thousand *Deebans* in my Favour; or asserts at first, thus, that this Thing is mine, or that the Person made an *Ekrar* thus, that so many *Deebans* are due from him to me: This Claim is not valid by the Opinion of the Generality of Doctors. Thus it is written in the *Ehaxanul Ulamaeyern*.

QUESTION.

In Case *Zemaub* in the Claim of certain Effects prefers an *Ekrar* in her Favour of her Husband for the said Effects, without declaring the Grounds: According to the Law, is this Paper rejected, and is the Claim of the said Woman false or not?

ANSWER.

This Paper is rejected; and the said Woman's Complaint is false. Thus in *Futtawee Hamader*. A Man's Deed of *Ekrar* of Effects, without explaining the Grounds; then certainly that Paper will be set aside according to the Generality of learned Men; because certainly, if the Effects had been his Right, he would therefore have set forth the Grounds; when he avoids giving the Reasons, and has Recourse to the Claim of an *Ekrar*, it is understood, that his Claim is false.

Shamsul

ANSWER.

It is not well founded. Thus it is written in the *Futtawee (Decree)* of *Abulhasan*. A Claim of Property under an *Ekrar* is not valid. According to the Opinion of the Generality of Doctors, whom may God favour! This Doctrine is in the *Deebans*, and also in *Deebans* where it is written. But there is not a proper Foundation of Property; and a Claim of Property under that, which is not a proper Foundation of Property, is not well founded: And, according to the Decree of *Deebans*, an *Ekrar* is not a Foundation of Property.

QUESTION.

In Case *Zemaub* having in his Possession certain Lands and other Effects, and *Ekrar* belonging to him, makes an *Ekrar* for the said Property to *Zemaub* his Wife: According to the *Shari'ah* Law, and by Means of this *Ekrar* of *Zemaub* for the said Property, is the same the Property of the said *Zemaub* or not?

ANSWER.

It is not. Thus it is written in *Shari'ah*: A Person's Property and Effects do not pass to another, except by Reason of his being compelled by a *Prohibitor*; and, in *Shari'ah*, an *Ekrar* is a *Prohibitor*, and not a Mode of constituting a *Prohibitor*.

QUESTION.

In Case *Zemaub* prefers a Claim to certain Things in this *Shari'ah*, that these Things are her Property, because the Possessor had made an *Ekrar* in her Favour for the said Things: According to the Books, is this well founded or not?

Answer.

APPENDIX. NUMBER II.

Stumfool Surksbee has declared the
fame. Order of the

A true Translation,

(Signed) *Henry Vanfittart.*

QUESTION.

Should Zeid die childless, leaving a Widow and other Heirs: According to Law, what Portion is the Widow entitled to of the Estate of Zeid?

ANSWER.

She is entitled to a Fourth. Thus in *Fussol il Amazee*. The Portion of a Wife is a Fourth, notwithstanding the Existence of all the other Heirs, except a Child, or the Child of a Son, in Case of whose Existence the Wife is entitled to an Eighth in every Instance, whether there be one Wife or more; should there be more, they will share it between them.

A true Translation,

(Signed) *Henry Vanfittart.*

QUESTION

In Case *Zeid*, in Order to establish his Power of Attorney, should produce two Persons as Witnesses on the Part of a Woman, who lives retired behind a Curtain, and they should make an *Akkbar* on the Part of the said Woman before the *Cawzee* of the Attorneyship of *Zeid*: According to the Law, is that *Akkbar* Evidence or not? And is it proper, that the *Cawzee* upon this Evidence should determine the Attorneyship of *Zeid* to be proved or not?

ANSWER.

The said Akbar is Evidence;
and it is proper, that the Cowzen
d upon

upon the stored Evidence should determine the Adversity of the to be proved. That in the case of the three Adams, either as to the Right of one Person with respect to another, which is Evidence, or Adams, as to the Right of the Person making the Order with respect to another Person, which is a Claim, or on the Reverse of that, which is an Acknowledgment. In former cases, when Evidence is produced before the Court, it is incumbent on the Claimant to show an Order. It is proper, however, that if he does not consider it as incumbent on him, he is an Idiot, and if he delays to issue an Order, he is reprehensible.

УДИТРУ

If the two Orders, viz. the
 Order of the Knights of the
 Golden Fleece, and the Order
 of the Holy Spirit, are
 considered as one, the
 Order of the Holy Spirit
 is the last Order of the
 Order of the Holy Spirit,

Δ Μ Ε Ρ.

It is not. Thus in the *Parliamentary* Order of the Commons, be put on the Evidence of two Witnesses who afterwards retired, the Order will not be annulled. (Signed) *W. H. O'Connell*

APPENDIX NUMBER H.

upon the afore said Evidence should determine the Attorneyship of Zeid to be proved. Thus in the *Shoom Vecbaia*. There are three *Akbars*, either as to the Right of one Person with respect to another, which is Evidence; or *Akbbar*, as to the Right of the Person making the *Akbbar* with respect to another Person, which is a Claim; or on the Reverse of this, which is an Acknowledgement. In *Ibrahim Shabee*. When Evidence is produced before the *Cowzee*, it is incumbent on the *Cowzee* to issue an Order. It is proper, inasmuch that, if he does not consider it as incumbent on him, he is an Infidel, and, if he delays to issue an Order, he is reprehensible.

QUESTION.

If the two Persons, Witnesses as afore said, should retract their Evidence, is the said Order of the *Cowzee* annulled or not?

ANSWER.

It is not. Thus in the *Futuwes Allumgeres*. If an Order of the *Cowzee* be passed on the Evidence of two Witnesses who afterwards retract, the Order will not be annulled. In *Ibrahim Shabee* it is transcribed from the *Hedaya* thus: If an Order be passed on the Evidence of these Persons who afterwards retract, it is not annulled, because their last Words contradict their first Words: Therefore the Order will not be annulled on Account of the Contradiction of their Words, because both Words are equal in Point of Credibility; but the first will have the Preference, because

Should the said Evidence be retracted, the Order of the Cowzee is not annulled. (Signed) [illegible]

QUESTION. Should the said Evidence be retracted, the Order of the Cowzee is not annulled. (Signed) [illegible]

ANSWER. The said Evidence is not retracted, the Order of the Cowzee is not annulled. (Signed) [illegible]

QUESTION. Should the said Evidence be retracted, the Order of the Cowzee is not annulled. (Signed) [illegible]

ANSWER. The said Evidence is not retracted, the Order of the Cowzee is not annulled. (Signed) [illegible]

QUESTION. Should the said Evidence be retracted, the Order of the Cowzee is not annulled. (Signed) [illegible]

because they have been strengthened
by the Order of the *Cawzer*.

A true Translatoin,

(Signed) *Henry Vansittart*.

In the Supreme Court of Judicature
at Fort-William in Bengal.

NADARA BEGUM

AGAINST

BEHADER BEG and OTHERS.

HENRY VANSITTART maketh
Oath, that he this Deponent under-
stands the *Persian* Language, and
can read the same; and that he this
Deponent has truly and faithfully
translated the several Papers an-
nexed to the Affidavit of *Mahomed
Coffin*; and the several Papers here-
unto annexed are true and faithful
Translations into the *English* Lan-
guage of the same *Persian* Papers
made to the best of his Abilities.

(Signed) *Henry Vansittart*.

Sworn at Calcutta, the

4th Day of March

1779, before me,

(Signed) *J. Hyde*.

BEFA

NUMBER III.

HEBA NAMA.—(COPY.)

IN the Name of God the Merciful and Compassionate, Blessing on
Mahomed and his Descendants. May they be safe!

Produced in Council, and said to be forged

January 20, 1777.

(Signed) S. DROZ.

The able in War
Cejab Shabban
Khan Helader.

Of
Zehriah.

Scaled on the Acknowledgment
 of the Declarant.

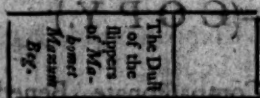
By the Favour of *Mahomed*
 first in seal.

Scaled on the Acknowledgment
 of the Declarant.

Bunda Derga
Anayer Ullah.

Scaled on the Acknowledgment
 of the Declarant.

FROM the enlightened Minds of
 Persons high in Rank and Re-
 putation, renowned Courtiers, and
 generally all Mankind, let it not re-
 main concealed or hidden, that I
Shabbaz Khan, Son of *Shabber*, Son
 of *Khajab Futeb Khan*, have ac-
 knowledged and confessed affirma-
 tively, truly, legally, and in a State
 of good Health, in this Manner;
 that, whatever Articles, Possessions,
 and Goods are my Property, all
 these I have in my Life-time wholly,
 small and great, either in my own
 Hands, or in that of others, of *Ja-*
quirs, or exclusive of *Jaquirs*, or
 Property in *Cabool*, made a legally
 valid Gift, and have delivered Sei-
 zin and Possession, without the Par-
 ticipation of any other Person, to *Na-*
dara Begum, the Daughter of *Shafsa*
Khan, my own Wife; so that no Per-
 son, during my Life-time or after my
 Death, of my Family, either nearly
 or distantly related, Male or Female,
 may take Possession of or resume the
 same out of whatever Sums have
 been sent to *Cabool*, according to
Sunnud and *Sunnuds*. I have given
 to the Son of *Mujnoon*, by Name *Ma-*
homed Allum, my Uncle by the Mo-
 ther's Side, the Sum of twenty Thou-
 sand *Rupees* to be enjoyed with his Pos-
 terity Generation after Generation;
 but of the remaining Lands of the



Witness to what is herein
contained.

Country of *Cabool*, which either have or may come into Possession, my Wife is the Mistress to bestow them, by Computation, on whomsoever she may think *worthy*, in Order that they, passing their Lives on its Produce without Purchase or Sale, may pray for my Happiness in Futurity. With respect to that full Sister's Son of mine named *Cojab Zekeriah*, I have appointed, that, whether he remain in the Service of the *Begum* my Wife, or in the Acquisition of his Learning, to be at all Times provided in Food and Raiment, directing the Defrayment of his Expences to be considered as one of those Things absolutely necessary; that his Right may not remain a Burthen on me, the Sum of five Hundred *Rupees* shall annually at the End of the Year be sent to the House of *Bebader Khan*, on Condition of Service and Obedience. She is Mistress of all the rest, and may give it to whomsoever she pleases: For which Reason these few Lines have been written as a *Heba Nama* or Deed of Gift, to remain in future as a *Sunnud* and Document done or made before just Believers and Men of Respect.

Written the Tenth of the auspicious Month of Ramazan, in the eighteenth Year of the Reign of the Emperor Shah Allum, corresponding with the Year One Thousand one hundred and ninety of the Flight of the Prophet, on whom be the Blessing of God and Peace.



CONFIDENTIAL

NUMBER IV.

EKRAR AUM.—(COPY.)

IN the Name of God the Merciful and Compassionate, Benediction on
Mohamed and his Descendants. May they be safe!

Produced in Council, and said to be forged

January 20, 1777.

The Seal of War
 Caid Shabbaz
 Khan Shabaz.

or
 Zahir

By the Order of *Mohamed*
 Khan Shabaz.

End of
 Manuscript.

A Witness to what is herein
 contained.

THE Cause of writing these
 legally valid Lines is, that I
 the Publisher, who by Name and Li-
 neage am *Cajab Shabbaz Khan*, Son
 of *Cajab Shab Futeh Khan*, being in
 good Health and sound Understand-
 ing, and in the Exercise of all my
 legal Faculties, have willingly and
 of my own Desire, without Force
 or Dislike, made this Trust-worthy
 and legal Acknowledgements in this
 Manner; that whatever is in my
 Possession of immoveable Estate in
 Lands, Houses, Villages, Slaves Male
 and Female, Robes, Cloths or Stuffs
 of Silk, Goods, Cash, Articles esti-
 mated by Measure or Weight, or
 reckoned by Number, Moveables,
 Vessel or Vessels, Bed Cloths and
 Carpets, and whatever may be under
 the Denomination of Things or
 Goods; and whatever established
 Debts are due from other People;
 all these are the Right and Property
 of *Nadara Begum*, the Daughter of
Sheikha Khan, my Wife, and are in
 my Hands an *Ujfrut* (*Asset*) and
 not of Right, and my Name in Bills
 of Sale and Bonds is also as in Trust,
 (*Assets*) being in Truth the Right
 and Property of the said Person. I
 have disclaimed and renounced all

false

false and contentious Claims in Re-
gard to the said Acknowledgement,
and I have made a general Discharge
and complete and entire Relinquish-
ment; neither have I or my Suc-
cessors therein any Right or De-
mand. The said Woman in Respect
to me the said Affirmant hath ra-
tified or confirmed the Whole of the
aforesaid Particulars, ratified them
sincerely, truly, and legally, as done
before just and respectable Men.

The Mark of the Signature of the Pilgrim
to the two sacred Cities *Hagy Mahomed*
and *Hagy Aboon*, that whatever is in the
Body is the Truth.

In one Hand-writing.

Written the 11th of *Ramazan* the
Auspicious, the 18th Year of
the Reign, according to the
Year 1190, of the Flight of the
Prophet, on whom be the Bless-
ing of God and Peace.

NUMBER V.

EXAMINATION of COJAH ZEKERIAH of
the COURT.

The CHIEF JUSTICE.

Ques. WHO wrote the Writing which is round the Seal?

Ans. What is written about my own Seal, and that of
Gyrus Beg in the *Hiba Nama*, (Exhibit. N.) I remember writing myself, but
the other three I do not remember writing. I am sure that above the Seal of
Mazum Beg is not mine; that around *Ullah* is not my writing.

Ques. You must know your Hand-writing; answer, is it your Hand-
writing, Yes or No.

Ans. It is not—it is not in my Memory; that is, I do not remember
it. If it is my Hand-writing, it may be so.

Ques. You must know your Hand-writing: You need not look at it so
frequently.

Ans. If it is, it may be I do not recollect it. If it may be, it may be.
I do not recollect it. It is certainly my Hand-writing.

Ques.

Quest. Now you have sworn it is your Hand-writing, and that it is not, which is true, one or the other of them must be true.

Ans. It is my Hand-writing.

Quest. You did not see *Mahomed Iwanuz* write *Ullab*, therefore why did you write under it.

Ans. I remember that, when *Gyru Beg* affixed his Seal, as he could not write, the Deceased *Shabbaz Beg Khan* desired me to write over it, and, having procured *Iwanuz* to write in my Absence *Ullab*, he desired me to write *Ullab*.

Quest. You have said, I think, that you never saw the *Haka Nama* after your own Seal was put to it, and till after the Death of *Shabbaz Beg Khan*, and that, when you did put your Seal to it, the other Seals were not to it, nor the Signature *Ullab*: How come you now then to say, that, after the Seal of *Gyru Beg* was put to it, and the Signature *Ullab*, *Shabbaz Beg Khan* desired you to write upon the *Haka Nama*?

Ans. It is true, that, when he desired me to put my Seal to it, there was no other Seal shewing; but about the same Time, or a Day after, when he witnessed it, I was by, and he desired me to witness it. I was always present with *Shabbaz Beg Khan*.

Quest. Were you by, when *Mahomed Iwanuz* wrote the Word *Ullab*?

Ans. I was not present then; when *Inout Ullab Beg* and *Ghyru Beg* put their Seals to it, I was present.

Quest. Why, if you did write under the Word *Ullab*, as you now say you did, why did not you immediately say, that you did write under it.

Ans. I was in Doubt about my own Hand-writing; and, having sworn, I was cautious in acknowledging it.

Quest. What did you mean by saying, that you never saw the Paper, after you had put your Seal to it, till after the Death of *Shabbaz Beg Khan*, if *Shabbaz Beg Khan* did in Fact produce it to you to write upon it at any Time, after you had put your Seal to it.

Ans. It is not a Contradiction, later on, the Seals were put to it after that Time. I mean to say, I never saw it till after the Death of *Shabbaz Beg Khan*.

Quest. Is all the Writing over the Seal your Hand-writing?

Ans. The Seal is not my Hand-writing.

Quest. Look at it, and be sure.

Ans. This also is my Hand-writing.

Quest. Why did you say it was not your Hand-writing, when it is?

Ans. I did not remember writing it, but, on seeing it is the same Flow of the Pen, I acknowledge it to be my Hand-writing.

(A true Copy.)

(Signed) W. SMOULT,
Clerk of the Papers.

(Signed) W. SMOULT,
Clerk of the Depositions.

NUMBER VI.

EXTRACT from a REPORT written by the
Commissioner of Law-Suits Mr. GEORGE BOGLE, on
the Causes of Nadara Begum against Behader Beg, &c.
relative to the Variations in the Evidence of Neaz Allk.

BEFORE I conclude the Head of Evidence as to the Deeds, it may be proper to state that Part of Neaz Allk's Testimony before alluded to, which respects his having seen the *Heba Nama* and *Ekrar Aam* before the *Cawzee*, and which, from the Variations that it contains, has been considered as sufficient to render his whole Evidence doubtful. To obviate an apparent Contradiction, it is necessary to observe, that the Examination made by the *Cawzee* was in the House of *Shabbaz Beg Khan*. Neaz Allk's Evidence on this Subject, extracted from different Parts of his Deposition, is as follows :
 " I saw this Paper with the *Cawzee* the first Time with the Seals on; the first
 " Time I saw it was in the House of *Shabbaz Beg Khan*. The *Cawzee* sent a
 " Message to the *Begum*, and ordered a Person to produce what Papers she
 " had; *Mullab Zekeriab* produced this Paper; he said, here are two Papers,
 " look at them, and peruse them; and said, that by Virtue of these Papers
 " the *Begum* claimed the Estate. The *Cawzee* said to *Zekeriab*, you claim
 " the Estate of *Shabbaz Beg Khan*; produce me the Right, by which you
 " claim it. He produced two Papers, this is one of them: I was sent for;
 " the *Cawzee* shewed me two Papers, and asked me which of them was my
 " Writing. I shewed this Paper, and pointed out, that this was my
 " Writing; the *Cawzee* swore me, and I swore this was my Writing.
 " Whatever was the Truth I related to the *Cawzee*. I then gave
 " the *Cawzee* the same Account I have now given to the Court. I said be-
 " fore the *Cawzee*, that, after the Death of *Shabbaz Beg Khan*, *Mullab Zeki-*
 " *riab* gave me a Draft of a *Heba Nama*, and desired me to copy it under the
 " Vine; and he said, that this was the Draft which existed in the Life of
 " *Shabbaz Beg Khan*, and he desired me to copy it: I said to the *Cawzee*, I
 " did not know whether this Draft was before or after the Death of *Shabbaz*
 " *Beg Khan*. I made out the Draft according to his Desire. I delivered the
 " Copy I made from the Draft to *Mullab Zekeriab*. All this was taken down
 " by the *Cawzee*. I put my Seal to the Declaration which I made before the
 " *Cawzee*; the *Cawzee* kept this Declaration. I was near the Stable in the
 " House of *Shabbaz Beg Khan*, and heard *Zekeriab* say, that by Virtue of
 " these Papers the *Begum* claims the Estate of *Shabbaz Beg Khan*, or Words
 " to that Effect, alluding to the Paper I have now in my Hand. What I
 " said before the *Cawzee* was taken down in Writing, and under his Seal."
 On his Cross-examination he says, " I remained in the Stable, which was near
 the

"the *Dowaneanna*, at the Time the *Cawzee* sent to the *Begum* to demand such Papers. As to my giving Evidence of what passed on that Occasion, News came to me from Time to Time of what passed in the *Dowaneanna*. I myself went and came several Times. I mean to say, that somebody came to the Stable, and told me what passed. I do not recollect who came and told me so. I mean to say, that a Person came to me and told me, that *Zekeriab* had produced two Papers, upon which he said the *Begum* founded her Claim. It is so long ago, I do not remember who it was that came to me. I mean to say, that I did not hear what *Zekeriab* said. In Order to make you understand the Matter, I told you the *Cawzee* sent for me while this Matter was in Agitation. As to which is true, whether I heard *Zekeriab* say these Words, or heard it from another, that is my Evidence, which I here now mentioned, that, while this Matter was in Agitation, I was then sent for by the *Cawzee*; the Truth is, I got Intelligence of it. With Regard to that being true, respecting what *Zekeriab* said to me after such a Time, how can I say what is true? A Man forgets what he said last Night. I cannot say certainly, whether the *Heba Nama* (Exhibit. N.) was delivered to the *Cawzee* upon the Day when *Cajab Zekeriab* produced that and the other Papers, and said these were the Papers on which the *Begum* claimed. I do not remember that the *Cawzee* returned the Paper (Exhibit. N.) At the Time it was produced, *Zekeriab* gave this Paper to the *Cawzee*, and upon that I was not present when it was delivered."

Considering how liable Mistakes are to happen in examining or taking down in *English* the Evidence of a Witness, who speaks in *Persian* or *Moons*, and that the Questions put to *Neaz Alli* are not written down, (as they were in the evasive and contradictory Part of *Zekeriab's* Evidence, about his Hand-writing) so as to point out his separate Answers, and to what Question each applied, it may not be deemed unreasonable to suppose that the Words in *Neaz Alli's* Deposition, *and heard*, may have been put down instead of *I heard*; his Evidence would then stand "I was near the Stable in the House of *Shah-Baz Beg Khan*; I heard *Zekeriab* say," &c. I will beg leave to examine it with this slight Alteration.

The first Part of *Neaz Alli's* Evidence appears to be intended merely to account for his being called before the *Cawzee*, and it is plain, he did not intend to mislead the Court, or to say that he was present when the *Cawzee* called upon *Zekeriab* to produce the Papers, and that *Zekeriab* first produced them. For, immediately after mentioning these Circumstances, he says, I was sent for, which is the same Thing as to say, I was not present when this passed. But it is probable from the Report of the *Cawzee* and *Musties*, written at a Time when they could have no Idea of this Action, and from *Zekeriab's* own Account of the Matter, that he was repeatedly called upon to produce the Deeds under which the Plaintiff claimed, and that the Witness, living in the House, and going backwards and forwards, did hear the *Cawzee* at one Time or other call upon him, and, if he *Neaz Alli* was examined to the *Heba Nama* before the *Cawzee* in Presence of *Zekeriab*, he could hardly fail to hear *Zekeriab*

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riah assert the *Begum's* Claim in Virtue of it and of the *Ekrar Aun*. The Fact of the Production of this Deed does not depend on the Testimony of this Witness. Only *Corramoolah* swears positively that he saw *Zekariah* produce it; and the Report of the *Cowzees* and *Musties* also declares, that it was produced; and surely, supposing them inclined to evince the Justice of their Determination against the *Begum's* Claims (and Judges, having formed an Opinion, naturally place every Matter in the Point of View most favourable to it) they would hardly have stated, that a Deed of Gift in Favour of the *Begum* was given in, but appeared to be forged, if they could have said, as they did with Respect to the Marriage Settlement, that it never was produced, and therefore that they had no Evidence of its Existence. I had often examined and cross-examined *Neaz Alli* before the Trial, and never had any Reason to have the least Doubt of his Veracity; and I am inclined to think, that his apparent Contradiction in his Evidence arose in the following Manner: When he says, he heard *Zekariah* assert his Claim, he was speaking only generally to the Fact; afterwards, on his Cross-examination, he is tied down by the Questions to answer, whether he was present at the precise Time when *Zekariah* first brought the Papers from the *Begum* and produced them before the *Cowzees*; and to this he answers, that he was not, he was in the Stable at the Time, and only heard of it from others; and, being a reserved and diffident Man, and finding that he was accused of contradicting something that he had said at the Beginning of his Examination, he attempts to explain his Meaning, and this Explanation is perfectly consistent with what he had first said, that he was sent for. He concludes his Evidence with saying, that he was not present when the *Haba-Nama* was delivered.

His Variation in his Evidence seems to depend greatly on the Interpretation of the indefinite and equivocal *Veit* produced, as an English Witness, that had not been present at the Time the Paper was first delivered, but came afterwards, and saw it before a Judge; should he be asked if he has seen the Paper produced before the Judges, he might, according to the Manner in which he understood the Question, answer either No or Yes. There is no Word perhaps in the *Moors* Language answering fully to the Meaning of *produce*; but this only throws it upon the Interpreter to find out the Intention of the Question, and the Answer gives Yes or No must depend on, whether he uses Words to ask the Witness, if he was present when the Paper was taken down and shewn, or generally, if he saw it exhibited before the *Cowzees*.

There is another Way of accounting for the apparent Contradiction in *Neaz Alli's* Evidence, which, to any one acquainted with the *Moors* Language, will appear very natural. It is difficult to render into *Moors*, "and heard *Zekariah* say, that by Virtue," &c. without using Words which may as well be translated, "and heard that *Zekariah* said," and as to what follows at the End of the Sentence, or Words to that Effect, the

Meaning of it in *English*, and much more so if the Phrase used in *Moors* was *esmaffest que Bant* will appear perhaps to import no more, than that *Zekeriab* spoke to that Purpose. Did *Neaz Alli* say, I was present, or I saw, or mentioned any Circumstance that shewed clearly he meant to say, he was present, the Case would be very different. But, the Word *heard* being equally applicable to what one hears with their own Ears, or by the Report of others; it will appear hard perhaps to try the Consistency of a Man's Evidence by such nice Distinctions.

In Order to throw a further Light on this Part of *Neaz Alli's* Evidence I beg Leave to add an Extract of the Testimony, which *Kurteemalab* had before given on the same Subject. He says, "this Paper (Exhibit N.) is "*Heba Nama*. I remember the Seals here of *Shabbaz Beg Khan*, of *Cojab Zekeriab*, of *Ghyrat Beg*, of *Inayet Ullah Beg*, and of *Mahomed Monzum*, "and the Word *Ullah* written in the Margin. I remember it also by the "Word *Kheed* being interlined. I remember the *Cowzeet* enquiring of "*Zekeriab*, on what Grounds his Constituent laid Claim to the Effects, or "was possessed of them. *Zekeriab* answered, three Things are the Grounds "of our Right, the *Heba Nama*, the *Ekyar Aum*, and the *Msher Nama*. "There it was that I saw this Paper produced by *Zekeriab*. I can swear "positively, that this is the very Paper *Zekeriab* then produced. I saw "the *Heba Nama* after it was delivered, once in the Council-room at "*Patra*, and since that till now I don't recollect that I ever saw it. I "should know the Paper (Exhibit P.) because the Word *bunna* is inter- "lined. I know also that the Testimony of *Inayet Ulla Beg* was not "added to it. I saw this Paper in the House of *Shabbaz Beg Khan* at the "Time that they disputed. I myself took this Paper from the *Cowzeet* "or *Golaum Mackdoom*. This was one of the Papers, on which *Cojab* "*Zekeriab* said the Plaintiff founded her Claim. This Paper (Exhibit P.) "now shewn to me, is the Paper I have been speaking of, and the Word "*bunna* is interlined, and the Seal of *Inayet Ulla* is not affixed to it."

NUM.

NUMBER VII.

Translation of a PETITION *from* Behader Beg Khan *to the* Supreme Council *at* Fort-William.

SHAHBAZ BEG KHAN, my Uncle, a Native of *Cabool*, resided for some Time and acquired a Fortune in this Country.—Having no Children, he wrote to *Allum Beg Khan*, my Father, at *Cabool*, desiring, as he himself was grown old, and had no Children, that he would send me, out of the four Sons which he had, that he might take me as his Son, and give me what he had acquired in this Country, as also marry me to the Daughter of his Wife's Sister, whom his Wife had adopted as her Daughter, intreating that my Father would, though he left *Lacks* behind him, come and see him; that he was very desirous to visit the Place of his Birth, but, being a Stranger here, and having no Person to leave as his Representative, he could not undertake the Journey.

Agreeable to what *Shabbaz Beg* wrote, my Father and I left *Cabool*, and came to him, when he accordingly adopted me, and gave me the Daughter of his Wife's Sister in Marriage. He afterwards endeavoured to procure a *Sunnud* in my Favour for his *Ultumgha* Lands, and for this Purpose introduced me to the Gentlemen at *Patna*, and sent me to *Calcutta*. It was known by every Body that I was his Nephew, and his adopted Son: Afterwards the same *Khan* made a Declaration, that all his Possessions were become my Property, and wished to make a Will to that Effect; but in the mean While he died from the Use of Mercury, which he took inwardly, and applied outwardly. On the third Day after his Death, when it is customary among the *Mussulmen* to hold the *Ferit Fattehab*, and to make public any Will, which may have been made by the Deceased, *Nadara Begum* did not produce any Papers whatever, but *Cojab Zekeriab*, and *Meer Khan*, her Sister's Son, upon being questioned, reported before all the Relations high and low, then assembled for the Observance of the *Fattehab*, that *Behader Khan* was left in the Room of *Shabbaz Beg Khan*; and that the Turban of the Deceased should be placed on his Head, after holding the *Fattehab* of the forty Days. Some Days after, *Nadara Begum* attempted to remove the Effects of the Deceased, and forcibly took up his Corpse from the Tomb, where I had deposited it in a *Coffenmen*, according to the Orders of the Deceased, with a Promise of conveying it afterwards to *Cabool*, and bury it. I was obliged to remain passive, a Number of his Relations being met together, and I a single Person, without any one to assist me. The *Begum* having clandestinely removed the Estate, and turned me out of the House, I was rendered helpless; wherefore, not wait-

waiting for the *Fattehab*, I preferred a Complaint to the Council, the Magistrates of the *Subab*, and they, agreeably to Custom and Usage, referred my Complaint to the *Qazee* and *Mustees* of the Town, with Orders to lock up the Effects until such Time as the Case should be determined, allowing neither Person Possession; and after investigating the Matter to report what Portion each Person was entitled to according to Law and the truly Writing.

The Officer of the Law in Consequence took an Inventory of the Effects before *Zekeriab Zullufcar Khan*, her Sister's Son, and others, her People, and myself; after having put the Effects under Lock, they heard the Claims of both Parties, when the Deed of Gift and *Ehram Nam* produced by *Zekeriab* were judged invalid, both by Law, and from being forged. In Fine, agreeable to the *Torrey*, or Laws of Division of Property, three Proportions were adjudged to *Allam Beg Khan*, my Father, whose Right of Inheritance was proved by the Declaration of *Zekeriab*, and one Share to *Nadara Begum*. A Report to this Effect was afterwards made out, and laid before the Council.—The Council then ordered a Division, agreeable to the Sentence of the Law, which accordingly took Place.—The whole Money and Effects, together with the House, having been valued, and put into four Shares by Appraisers, *Zekeriab* chose one of the Shares for *Nadara Begum*. The Share of *Allam Beg* was put under my Charge, and *Zekeriab* deposited the Share of the *Begum* under Lock, in the secret Apartment, under the Charge of *Naigabdas*, where it still remains.

Nadara Begum afterwards, prompted by an evil Disposition, and the Insinuations of her Servants and Dependants, refusing to take her Share, retained in her Possession the *Firman* and *Sunnats* of the *Ulungba*, with the *Coballahi* of House, &c. the Hand and Seal of the Deceased *Khan*; and also kept up the Female Slaves of the deceased *Bhasen*, who were acquainted with the Removal of his Estate; and would not produce the same before the Officers of Justice, but, acting refractorily, went and took up her Residence at the *Dargah* of *Shah Arzan*.—The next proceeded to *Calcutta*, and, complaining in the *English* Court, procured a Warrant against me, and the *Qazee* and *Mustees*.—The Gentlemen of the *Adalat*, although I never served the Company, nor had any Connection with their Government, under the Plea of my having put my Seal to a Deed of Security for the *Perwannahs* of *Amritsar*; and *Reddore Mubals*, Dependant on the *Mexandis*, taxed me with being under Engagements to Government, and subjected me to their Law.

The Court did not ascertain the Validity or Invalidity of the *Heba Nama* or *Ehram Nam* by the *Mussulman* Law, nor the Forgery.—The Estate is under the Value of a Lack of *Rupias*, exclusive of the House, as appears from the Valuation of the Appraisers, and the Papers of both Parties. The Gentlemen of the *Adalat* have passed a Decree for three Lacks of *Rupias* in Favour of the *Begum*. *Allam Beg*, my Father, received Possession

sion of his Share from me: the Whole of which, besides other Property belonging to him, and deposited in the Hands of Merchants, together with the Jewels of his *Zamranab*, have been forcibly seized on by a Sergeant; although he could have no Business with the Property of my Father, and he is no Wife subject to the Court.

The *Mustia* and myself unjustly suffer close Confinement in a single Room, which is the Place used by Prisoners to make Water, and to dress their Vitals in. The Number of Prisoners, and the Noise which they occasion, is such that it is difficult to sleep. The Room is locked up at Night, and we are not even allowed to go to the Necessary, nor can we get any Food admitted at that Time. I cannot comprehend what Faults have been committed by myself and the *Mustia*, or in any Manner understand the Justice of the Gentlemen of the Court, who have proceeded against us in this Manner, notwithstanding the Decision passed according to the Law. The Property of my Father, with the Houses and Property of the *Mustia*, have been seized, and sold at public Auction for the Benefit of the *Begum*.

As I came from a foreign Country to yours, at the Desire of my Uncle, and the Cause in Question was tried and decided by the *Gowdar*, under the Sanction of the Council, all of whom are Officers of Government: As I did not take Possession of any Thing by Force or Violence, and have fallen into this Calamity from a Decision of the Officers of your Government: I am hopeful, from your Justice and Equity, that you will graciously interest yourselves for my Release.

NUMBER VIII.

The Advocate-General's REPORT upon the PETITION
of Behader Beg.

THOUGH I should take every Allegation in this Petition as proved, still I do not see how the Board can now afford immediate and effectual Relief to the Petitioner, otherwise than by satisfying the Judgment. The only Alleviation indeed, that his Sufferings will admit of, is the Hopes of a remote Redress from *England*; even that can have no other Foundation, than a Representation from this Government to the Direction, in Terms as strong and affecting as the Case will admit of.

That Measure, operating with other Considerations, may perhaps produce an Application to the Legislature for such Parliamentary Relief as may extend to all similar Cases, whether as being of doubtful Justice, or evident Compassion, throughout the Company's Presidencies; or, on some Bill that regards the future Management of these Provinces, may occasion the Insertion of a Clause for the Relief of Insolvents here; or, finally, one that at least may meet the singular Hardships of the present Case,

Cafe, which to my Mind furnishes of itself Occasion abundantly sufficient for going to Parliament.

As, in either of the two former Events, the Cafe before me may exceed in the Amount of the Sum for which Judgment is given, the probable Limitation of such Act or Clause, on Application, will of Course be made, that, under the peculiar Compassion of this Cafe, the Petitioners and the other Defendants shall be by Name included in it; and here let me add, that, from a Wish to forward any humane Intention of the Board in this Matter, as well as because *strong Doubts still hang upon my Mind with Respect to the Evidence upon which the Judgment rests*, I make a cheerful Offer (beyond what may appear to be my strict Line of Duty) of my best Assistance in those Parts of this Business, in which my Situation may enable me to contribute in the smallest Degree to its Success.

Though the Event of such Application is certainly precarious and remote, there still however occur different Modes, in which no inconsiderable present Relief may reach the Petitioner and his Fellow-sufferers, a Circumstance that claims some Attention, inasmuch, as beside the usual and unavoidable Distresses of a Prison, they have long complained, and still I find complain, of *cruel, and unprecedented Hardships, which bear no Relation to the Judgment, and are, as they justly conceive, in no Sort necessary to the Ends of Justice.*

As it is neither the Spirit of *English Law*, nor the Disposition of *Englishmen*, to oppress the Unhappy, or give superfluous Rigour even to criminal Justice, though in Cases of the deepest and most atrocious Guilt, I was disposed to think, when these Complaints first reached me, that they arose on the Part of the Sufferers from the Novelty of their Situation, or their Ignorance of our Customs, or might perhaps have been somewhat exaggerated by those who conveyed them; as they now stand in some Degree confirmed however by the Petition before me, it becomes my Duty to suggest the Mode to those who I am confident have the Disposition to remove them.

If, after what has passed upon former Occasions, it shall be thought that the Board (having previously intimated to the Judges, through the Company's Advocates or Attorney, its Intention in Favour of the Petitioner) I can, consistently with its Dignity, apply for an Order directed to those, who have the immediate Government of the Gaol, that, during the long Interval before the Event of the intended Representation at Home can be known, the Comfort and Accommodation of these wretched Men shall be provided for, as far as may be consistent with their safe Custody, I cannot admit a Doubt of its being heard with a ready Attention, and cheerfully complied with.

If it is apprehended however, that such Application from Government, publickly and officially made, may be considered as an Interference in Matters beyond their Province, and may therefore be resisted, still I think that for the Attainment of an End like this (which, being as-

ter Judgment, can have no Influence upon the Administration of Justice) Forms may be dispensed with, and a private Appeal to the private Feelings of the Judges as Men promises to produce the desired Effect.

If neither however shall be thought advisable; or either, or both, being tried, shall fail; and upon Enquiry it shall appear, that the Petitioner's Complaints are but too well founded; one only other Course remains, and I mention it with Reluctance, an Application to the Court, grounded upon full Affidavits of Facts, that are now before me, against him that has committed, or who knowingly has permitted those Acts of Cruelty and Oppression for a wanton and unfeeling Abuse of the Powers of his Office.

Upon the best Consideration I have been able to give this Matter, I am of Opinion then that, for a full and adequate Relief of the Petitioner's Sufferings, the Power of Parliament must be resorted to; and to take from the Calamity of his present Situation, so as in the Interval to make Life supportable, depends upon the Success of an Application of the Kind, and in the Quarter I have mentioned.

(Signed)

Calcutta, Sept.

John Day, Advocate-General.

15, 1779.

NUMBER IX.

(COPIES)

PETITION of Meer Burket Ullah and Gullaum Muckdoom, *Musries of the Dewanny Adawlut at Patna.*

WE have been informed of the favourable Ear which you have lent to our late Petition, and for ourselves and Families return you Thanks for your Goodness in relieving our Distress. We hope you will not think us presumptuous in again laying the Hardship of our Case before you. We know your Inclination to relieve us, but are taught that there are Doubts of the Propriety of your doing it, and, should therefore no other more speedy Means occur to procure our Enlargement, we humbly request you will forward the accompanying Petition to the Company, as it was the just and upright Performance of our Duty in their Service, that has been the Cause of our Sufferings, in thinking ourselves by every Tie of Justice or Humanity entitled to an Indemnity from them.

NUM-

NUMBER X.

To the Honourable WARREN HASTINGS, Esq; Governor-General, and COUNCIL, in their Revenue Department at Fort-William.

Honourable Sir and Sirs?

DEEMING the enclosed *Arzees* worthy of your particular Attention, and being on Subjects to which we can give no Reply, we beg Leave to lay them before you.

Allum Beg Khan is the Father of *Bebader Beg*, whose Cause you were pleased lately to support.

We are, with Respect,

Honourable Sir and Sirs,

Your most obedient, humble Servants,

(Signed) EWAN LAW,

WILLIAM MAXWELL,

WILLIAM YOUNG,

G. BRIGHT,

SHEARMAN BIRD,

C. KEATING.

Patna, April 12,

1779.

FIRST. From ALLUM BEG KHAN.

I CAME to this Country to pay my Devotions at the *Durgaws* of *Babar* and *Shaikpoora*. I have now received Intelligence from my Family, that two Serjeants, accompanied by *Meer Khan* and fifty Men, have surrounded every one of my Houses, and entered my own by Force; and, having searched all the People, turned them out. The two Serjeants and *Meer Khan*, with the *Bengallies*, then went to the glazed Apartments; the Doors of which they broke open, and took out all the Money and Effects that were there. I don't know what more they had done. After this, *Meer Khan* consulted with the Serjeants and the *Bengallies*; and, having come out of these Apartments, the two Serjeants placed themselves at the Door, and *Meer Khan* took two Women and one Slave-Girl, *Fringies* and the *Bengallies*, and entered the Door of the *Zunnana*, notwithstanding the Exclamations of my People, who said, "This is the *Zunnana* of *Allum Beg Khan*, why do you commit these Violences here?"

They

They paid no Regard to them; and *Meer Khan* abused my People very much; at length, the *Fringie Women* went in, and stripped every one in the *Zunnana* of her Jewels, which they brought out. They also took the Bracelets, and Necklace, &c. off *Behader Beg's* Daughter. They did not leave a single Thing to any one there, except barely their Cloaths. They have committed the most violent Outrage and Oppression. They also plundered the Share of Money and Effects, decreed to me by Law from the Estate of *Shabbaz Beg Khan*, and which had been taken out of the Hands of *Behader Beg Khan*, together with two Years Revenue of the *Ultungah*, and the Price of forty Horses and Camels, brought from *Furruckabad*, which was deposited in Chests, and in different Rooms in the *Zunnana*, which they broke open. *Meer Khan* has likewise plundered the Houses of *Ahmud Beg* and *Gour Khan*, which are situated near to mine, and searched their *Zunnanas*. It is strange Justice that the Gentlemen of *Calcutta* do, to plunder and oppress me in this Manner, although I am no Ways amenable to their Court. What Justice is it? I am in the greatest Astonishment.

SECOND. From MIRZA AHMUD BEG.

ALTHOUGH I am not in the least concerned in this Business, nor have I made a Complaint against any one; yet, because I am related to *Behader Beg Khan*, and live near to his House, *Meer Khan*, the *Begum's* Sister's Son, who arrived from *Calcutta*, has seized upon the Whole of my Property and Effects, and plundered and stripped all the Women in my House, whom he turned out, with a single Cloth on. You being the Rulers of this Province, I make my Complaint to you, and request you will afford me your Protection.

(True Copies.)

(Signed) L. CRUS LAPLANT,

Secretary.

Patna,

April 12, 1779.

NUMBER XI.

The PETITION of Meer Burkut Ullah and Gullaum Muckdoom, *Musties in the Dewanny Court of Adaulut at Patna.*

MORE than seven Months have elapsed, since we have lingered under a rigorous Confinement, in the common Prison of Calcutta.

By the holy *Koran* are inculcated Reverence and Respect to the Decrees of the Magistrate; in the Law there is no Distinction of Persons; its Object is universal Order, and no one has Exemption from the Rule prescribed; in holy Resignation we now bow the Head to the Stroke under which we suffer.

The Judgment against us may be just, according to the Law of *Christian* Countries; severe it must appear to us, who are Strangers to those Laws, and never conceived ourselves the Objects of them, till we felt the Punishment they inflicted upon us.

Living, as we imagined, in the Enjoyment of our own Laws and Customs, secured to us, and protected by your Government, little did we suppose that we should be suddenly subjected to a foreign Tribunal, to be tried by Laws never promulgated in *Hindustan*: Much less could we have expected it, at the very Time that we were acting under the Authority of your Agents, in the Administration of Justice. On the Occasion that led to this Calamity, their Orders to us were, that we should examine and report on the Right of two *Mahomedans* claiming the Estate of a deceased Person, who was also a *Mahomedan*.

It was our Duty to obey; we examined, reported, and were directed to carry into Execution the *Futwah* we had given. Here was no Room to doubt of what we did; we were conscious of the Justice of our Decree; and the Power that ordered its Execution held the Dominion over us. What is it then that has been alledged against us? Have we acted corruptly? No; not the smallest Imputation has been thrown on our Probity; nor has it been attempted to be proved that we have erred in our Exposition of the *Mahomedan* Law.

In what then does our Crime consist? Brought before the *English* Court of Justice, it has been declared to us, that we were not properly impowered to do the Acts we had been so long accustomed to perform; and we must suffer for assumed Authority. It was then we perceived, that the real Power was concealed from public View, and that, which was universally exercised, was exercised without a legal Sanction.

Here

Heretofore we had no Knowledge of any other Government than that constituted by you, in the Persons of your Governor and Council. This was the Power we saw, we felt and looked to, as the Umpire of our Rights and Wrongs.

As Inhabitants of the Provinces you possess, and much more as your Officers, we have a Right to Security from all Injuries. We have been governed by you as Subjects, we have been employed by you in the Administration of Justice, and our Conduct in Office stands clear and unimpeached.

The Laws and our Religion prescribe an unlimited Submission to the *Hakim Wul*, or Magistrate of the Time. You possess the Powers of that Magistracy, and you exercise them. If in the Exercise of this Authority you have exceeded your legal Powers, it is hard that we should be answerable for the Consequences in our Obedience to them; and by every Principle of Justice we have a Right to be indemnified from them by your Protection.

At the same Time therefore that we plead for your Compassion, we call upon your Justice to discharge the Fine laid upon us, that we may regain that Liberty which we have lost, not by any Fault in us, but by the Performance of our Duty in the Office in which you commanded our Services.

NUMBER XII.

(TRANSLATION.)

PETITION of Kurroon, Widow of Moliwy Meer Saadi, late *Cawzee* of the Soubah of Bahar.

LET me represent to the Gentlemen the sorrowful Situation into which I am thrown. My Husband *Moliwy Meer Saadi* having been unjustly laid hold of by the *Calcutta Adaulat*, on Account of his Conduct in the Cause of *Nadara Begum* and *Behader Beg*, although conformable to Justice, it filled his Mind with such Grief and Affliction as to occasion his Death; and I am thereby cast upon the World without a Lord, or any one else to protect me. To add Misfortune to Misfortune, the Gentlemen of the *Adaulat* have attached and sold all my Husband's Goods and Effects, including his Houses, Lands, &c. so that I am reduced to such a State as to have neither Dwelling, nor Land, or Money wherewithal to support myself. In Want of House, Food, and Cloaths, I pass Night and Day in Sorrow, considering in what Manner I shall be able to subsist. It is

my

my earnest Wish that God would visit me with Death, the Pains of which would be preferable to Living in such a State: but, my Life not being in my own Power, I am without Remedy.

I trust the Gentlemen, whom God has appointed Rulers of the Country, and the Protectors of the Poor, will, out of the Generosity and Attention to the Distressed, for which they are famed all over the Country, settle some Allowance upon me in the same Manner as they have graciously done upon the *Musnies*, and enable me to live employed in Prayers for their Welfare and Prosperity.

(Translation)

(Signed)

W. CHALMERS,

Persian Translator to the *Khalifa*.

NUMBER XIII.

(COPY.)

PETITION from the Renters of the Bahar Province, recorded in the Proceedings of the Governor-General and Supreme Council at Fort-William.

"IT is with inexpressible Grief and Astonishment, that we have learned,
" from the general Rumour that has spread through the Province,
" that by a late Determination of the *English Adaulat* (the Supreme Court
" of Justice) in *Calcutta*, all Persons, who hold Lands in Farm of the
" Government, and also their Securities, are declared within the Juris-
" diction of that Court, and liable to be prosecuted therein. How much
" this Information has alarmed us, it is not in our Power to describe.
" Which of us can venture to enforce the Payment of our Rents, if we
" are thereby rendered liable to be seized and dragged down to *Calcutta*,
" on a Complaint from the most insignificant, or any litigious and ill-
" disposed Person in the *Perrumab*? We have not the smallest Know-
" ledge of the Laws and Customs of the *English* Court, nor is it within
" our Conception by what Rules they are regulated; but we apprehend
" they were formed for another State of Society, Religion, and Country,
" and are totally different from the Laws and Manners of this. When
" the Company first came into the Possession of the *Dewanny*, Justice was
" administered by the *Nash Nazim* as heretofore. After the Year of the
" Famine, when a Council was appointed for the Revenues, two *Adaulats*
" *Cutcherrys* were established, the one for criminal Causes the other for
" Causes

Causes of Property. The Proceedings in both these Courts were regulated by the Laws and Customs of this Country, and the Gentlemen who presided at them were ordered to decide according to the ancient Constitution: To these we repaired without Fear; we pleaded our Causes ourselves, or through our *Vakeels*, in our own Manner; no Expence or Delay attended the Process; and, by Reason of the Vicinity, the Responsibility of every Witness was generally known; and, if the Cause related to the Revenue, the Gentleman presiding was himself acquainted with the Affair, and he gave instant Redress by Orders the best adapted to the Case in Question; and the Regulations were so framed, that Justice might be dispensed to all, and yet a due Attention and Support given to the Collections. Farmers and *Zemindars* were not to be called in, but in Matters of Importance, and then not during the Seasons of the Harvest. But now the contrary of this will happen to us from the *English* Court; and no one will pay the least Regard to the Time when the Settlement and Collections most require our Presence in the *Pargunnahs*: But we may by a Warrant be dragged away in the Night, without an Opportunity of settling any Part of our Affairs, to a Place four hundred Miles distant, and which from a Difference of Climate often proves fatal.

Many of us rely solely on our own Industry and Care for the Management of our Farms, and have no *Deputies*, with whom to entrust the Charge of our Affairs during our Absence. Besides, what Respect or Attention will be paid to the Deputy, when the People see the Principal seized in this Manner like a Robber, and carried off to a Place, from whence it is probable he may never return?

The *Zemindars* and *Rajotts* are at all Times glad of any Pretext to evade the Discharge of their Rents, and some Consequence and Authority is absolutely necessary to enable a Farmer to make his Collections; but, when he is liable on any trifling Complaints to be treated in this ignominious Manner, what Influence will remain to him, or who will be daring enough under these Predicaments to exercise any Power to enforce the Collections? And again, what *Mahajin*, or Banker, will now venture to become Security for a Farmer, seeing he is thereby liable to be summoned to *Chitutsa* by the *English* Court? Or indeed how can he venture either to advance Money, or hold any Kind of Connection with him, whilst it is not in his Power clearly to understand and determine, whether this late subjecting Order relates to Securities only, or will equally involve him who has any other Dealings with a Farmer of Lands. The *Rajotts* too will now either hold back their Rents, and so evade the Payments; or the Farmer, driven to the necessary Use of compulsive Measures, is by a single Complaint laid open to the Loss of his Honour, Fortune, and Credit.

Supposing however that the *Rajotts* Complaint proves unjust, and the Farmer stands acquitted of any criminal Conduct, his Case is equally deplorable, he finds himself turned forth from Prison at a vast Distance

"Distance from his Home, and Friends, his Credit lost; and the Farm, which was perhaps his sole Dependence, ruined or gone into other Hands; and on his Return, after enduring a thousand Hardships, who will make good the Losses he has sustained? He still finds himself answerable for the Arrears of the Revenues, for which he had engaged, and for which no Pleas of what he had thus suffered would be heard in Mitigation.

"It is now four Years that we have heard, that by the Orders from Europe all *Englishmen* and Servants were amenable to this new Court; but we never till now understood, that Persons, who had no other Connection with the Company, than holding a Farm, were also brought under its Jurisdiction, or that they had any Thing else to consider besides the Payment of the Money agreed for as in Matter of Trade, which it resembles.

"We do not know, whether this Order of the Court is conformable to the Regulation from Europe, or not: But, in rendering us miserable, it obliges us to call for your Protection against it; and, if that cannot be afforded us, that we may be allowed to relinquish our Farms, that we may retire with our Families to some other Country.

"Hitherto we lived in Peace and Happiness under the Shadow of the Company's Administration. The Regulations, by which the *Adauluts* were conducted were plain and easy, suitable to our Understandings, and we cheerfully obeyed their Decisions; but to what Purpose do we obey them, if they do not in Return afford us their Protection, and Causes are again tried and otherwise decreed in another Court at *Calcutta*, to which we are summoned? Nay we are even rendered liable to be punished there for what we have received or done in Obedience to the Decrees of the *Adaulut* here. If every Matter is to be again tried in the *English* Court at *Calcutta*, the *Adaulut* here, so far from being the Means of Redress, becomes a Grievance and Vexation, as it subjects us to double Attendance and a double Trial. In this Case, to what End should it be continued? Better it was totally abolished.

"If in the Course of this Petition we have urged any Thing wrong, or improperly, forgive and pity us: Expressions are not weighed in a State of Anguish; and we write like those who feel the Wound, but know not the Hand that strikes.

"We request, that this Petition may be forwarded to the Governor-General and the Gentlemen of the Council of *Calcutta*: And you, who are acquainted with all that regards our Situations, will yourselves, in Kindness to us, represent what the Occasion requires, so that either the Authority of the Court of *Calcutta* may be removed from us, or our Lease dissolved, and we receive what Sum we have expended in the Improvement of the Lands we rented."

Paina, Feb.

11, 1779.

(A true Copy)

L. Cruf. Laplant, Secretary.

[Signed by above Forty LANDHOLDERS and RENTERS.]

APPENDIX II.

PROCEEDINGS in the CRIMINAL PROSECUTION.

NUMBER I.

Supreme Court of Judicature at Fort-William in Bengal.

AT a SESSIONS of Oyer and Terminer and Gaol-Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Eleventh Day of June, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

R E X *versus*

NADURAH BEGUM, COJA ZACHARIAH KHAWN, GYRIAT BEIG, INNOYETULLAH BEIG, KAWZEI MOAZUM BEIG, and HADGER MAHOMED IVAUZ.

IT is ordered, that *James Durnford*, Esq; one of the Clerks of the Papers, do attend the Grand Jury with Exhibits, marked N, O, P, Q, (in whose Custody they are) filed on Behalf of the Defendants on the Plea Side, in a Cause wherein *Nadurab Begum* was Plaintiff, and *Bedader Beig, Cauzee Saddy, Musfee Baracknullab, and Musfee Golaum Mackdoom*, were Defendants, referred to in the Indictment now before the said Grand Jury, upon the Application of the Gentlemen of the said Grand Jury.

Witness, Sir *Elijah Impey*, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord, One Thousand Seven Hundred and Seventy-nine.

Naylor, Attorney,
June 11, 1779.

By the Court,
William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

N. B. The Names of the Parties are somewhat differently spelt in this Part of the Appendix from the foregoing. But, as the Proceedings which follow are taken from Office-Copies, the Editor did not think himself at liberty (for the sake of conformity) to alter the mode of spelling. The Reader will find little difficulty in recognizing the respective Persons or Parties to the Cause.

NUMBER II.

Supreme Court of Judicature at Fort-William in Bengal.

AT a SESSIONS of Oyer and Terminer and Gaol-Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal; and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Fourteenth Day of June, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

R E X versus

NADURAH BEGUM, COJA ZACHARIAH KHAWN, GYRAT BEIG, INNOYETULLAH BEIG, KAUSHE MOAZUM BEIG, and HADGEE MANOMED IVAUZ.

IT is ordered, that six Writs of *Capias* do issue against the said Defendants, to apprehend them on an Indictment for Forgery, being found upon the Motion of Mr. Lawrence, of Counsel for the Prosecution.

Witness, Sir *Elijah Impey*, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord, One Thousand Seven Hundred and Seventy-nine.

By the Court,

Naylor, Attorney,
June 14, 1779.

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

In writing Oriental Names, the Ear is more consulted than the eye; and therefore different persons will exhibit the same sound by different combinations of letters. — This is a matter of slight Consequence, whether we read *Behader Beg* for *Behader Baig*, or *Burhat Ullah* for *Burack-tulab*, or *vice versa*, the difference is trifling. These unhappy innocent men are equally suffering the horrors of a loathsome goal, their persons violated, their property confiscated, their peace and happiness ruined for ever; and (for acting under the authority of the Patna Council, and for their ignorance of the maxims of a foreign law administered by Foreign Judges) are equally undergoing the severe punishment which to sensible and ingenuous minds man can inflict on man. — But it is hoped Parliament will interpose for their Deliverance.

NUMBER III.

In the Supreme Court of Judicature at Fort-William
in Bengal.

Filed June 14, 1779,

William Johnson, Clerk of the Crown.

CROWN SIDE.

R E X versus

NAUDERAH BEIGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, HADGEE MAHOMED IVAUZ, and
KHAUZEE MOAZUM BEIG.

Coja Zechariah Khawn maketh Oath, and saith, that soon after the Death of Shorabauz Beig Khawn, deceased, which is now about Thirty-two Months ago, he, this Deponent, was taken into Custody at Patna, in the Province of Bahar, together with Gyrat Beig, Innoyetullah Beig, Khawzee Moazum Beig, and Hadgee Mahomed Ivauz, four of the Defendants above-named, where he remained confined for about the Space of Seven Months, and was then sent, together with the said Gyrat Beig, Innoyetullah Beig, Khawzee Moazum Beig, and Hadgee Mahomed Ivauz, to Moorshedabad, to Mahomed Reza Khawn, who was, as this Deponent is informed, and believes, at that Time, the Chief criminal Magistrate among the Natives in Bengal and Bahar: And this Deponent further saith, that he was dismissed by the said Mahomed Reza Khawn, together with the said Gyrat Beig, Innoyetullah Beig, Khawzee Moazum Beig, and Hadgee Mahomed Ivauz, about Sixteen Months ago, with a Perwannab, or Order to the Fouzdar of Patna; which Perwannab has been since exhibited in the Cause, wherein the said Nauderah Beigum was Plaintiff, and Rohander Beig, Khawzee Shaden, Mustee Bazzachtoolah, and Mustee Gallowan Muckloom, were Defendants, and is now filed in Court, as this Deponent has been informed, and verily believes; which Perwannab contained Orders to the said Rohander, as this Deponent verily believes, to restore to the said Nauderah Beigum the Effects which had been taken from her; which Order was, as this Deponent likewise verily believes, founded on the said Mahomed Reza Khawn's having judicially examined the two Writings mentioned in the Indictment, presented and found, as this Deponent is advised and believes, against this Deponent, and the other Defendants above-named, and having on such judicial Examination de-

cided that the said two Writings were true and genuine, made and signed by *Shawbauz Beig Khawn*, deceased, in his Life-time, and were not forged or counterfeit Writings made by this Deponent, or the other Defendants, or by any other Person or Persons whatsoever.

Sworn this 14th Day of *June*, 1779,
before me *J. Hyde*.

حوالہ ذکر یافتہ

Read *June* 16, 1779,
James Durnford, Reading Clerk.

Read *June* 14, 1779,
James Durnford, Reading Clerk.

(True Copy)
William Johnson, Clerk of the Crown.

NUMBER IV.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

Filed *June* 14, 1779,
William Johnson, Clerk of the Crown.

CROWN SIDE.

R E X versus

*NAUDERAB BEIG, COJA ZECHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, KHAUZEE MOAZUM BEIG, and HAD-
ZEE MAHOMED IVAUZ.*

GEORGE WROUGHTON maketh Oath, and saith, that a Bill of Indictment has been presented and found against the said *Nauderab Begum, Coja Zechariab Khawn, Gyrat Beig, Innoyetullah Beig, Khauzee Moazum Beig, and Hadjee Mahomed Ivauz*, for a supposed Forgery of one or more Deeds in the *Persian* Language, which said Indictment is founded on two Instruments, as this Deponent apprehends and believes, which were lately produced in a Cause, wherein this Deponent was Attorney, for the said *Nauderab Begum*, the Plaintiff, against *Babauder Beig, Khauzee Sabdee, Mustee Barrachisola, and Mustee Gullaum Mackdoom*, who were Defendants; because this Deponent was present on the Eleventh Day of this instant *June*, when an Order was made by the Court for the said

said two *Persian Papers*, to be produced to the Grand Jury by Mr. *Durnford*, the Clerk of the Papers, for the Purpose of comparing the same with the said Indictment: And this Deponent further saith, that the said Instruments were at the Trial of the same Cause thoroughly investigated, as this Deponent verily believes, by this honourable Court, and proved to the Satisfaction of the said Court to have been fair and valid Instruments, and not forged by the said *Nauderab Begum*, *Coja Zecbariab Khawn*, *Gyrat Beig*, *Innoyetullah Beig*, *Hadgee Mabomed Ivauz*, and *Kbauzee Moazum Beig*, or by either of them, as is alledged. And this Deponent lastly saith, that the said two *Persian Papers* were produced at the Trial of the said Cause, on the Part of the Defendants in the said Cause, and not on the Part of the said *Nauderab Begum*, and have remained, as this Deponent verily believes, in this Court, from that Time to the present; wherefore this Deponent verily believes, that neither of the said Papers have ever been in the Possession of the said *Nauderab Begum*, in *Calcutta*.

GEORGE WROUGHTON.

Sworn this 14th Day of June, 1779,
before me J. Hyde.

Read June 16, 1779,
James Durnford, Reading Clerk.

Read June 14, 1779,
James Durnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

NUMBER

NUMBER V.

Supreme Court of Judicature at Fort-William in Bengal.

AT a SESSIONS of Oyer and Terminer and Gaol-Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Fourteenth Day of June, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

R E X versus

NADURAH BEGUM, COJA ZACHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, KAUZEE MOAZUM BEIG, and HADGEE
MAHOMED IVAUZ.

COJA ZACHARIAH KHAWN, Gyrat Beig, Innoyetullah Beig, Kauzee Moazum Beig, and Hadgee Mahomed-Ivauz, being surrendered before the Court, Mr. Bris moves on two several Affidavits of Coja Zachariah Khawn, and George Wroughton, that they may be admitted to Bail. Mr. Lawrence, of Counsel for the Prosecution, opposes the Motion of Bail; and on hearing Counsel on both Sides, and on Hyderam Bonagee, and Durgaram Chuckerbutty, becoming Bail for the said Defendants, in the Sum of Arcot Rupees, three Thousand for each Defendant, for their Appearance at the Sitting of the Court on Wednesday next. It is ordered, on the Consent of Mr. Law and Mr. Young, the Prosecutors, and on Mr. Naylor, Attorney for the Prosecution, admitting the said Hyderam Bonagee, and Durgaram Chuckerbutty, as good Bail; that the said Coja Zachariah Khawn, Gyrat Beig, Innoyetullah Beig, Kauzee Moazum Beig, and Hadgee Mahomed Ivauz, be admitted to Bail till the Sitting of the Court on Wednesday next.

Witness, Sir Elijah Impey, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord Christ, One Thousand Seven Hundred and Seventy-nine,

By the Court,

William Johnson, Clerk of the Crown.

Wroughton, Attorney.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

NUMBER VI

In the Supreme Court of Judicature at Fort-William in Bengal.

Filed June 14, 1779.

William Johnson, Clerk of the Crown.

CROWN SIDE.

R E X versus

NAUDERAH BEIGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, KHAWZEE MOAZUM BEIG, and HADGEE
MAHOMED IVAUZ.

COJA ZECHARIAH KHAWN maketh Oath, that the above-named Defendant, Nauderah Beigum, left Calcutta on or before the Second Day of June Instant, not of her own Accord, but by the Advice of some of her Friends, to avoid the Shame and Disgrace of being arrested while she was unprepared with Bail: And this Deponent further saith, that the said Nauderah Beigum has been since advised to return to Calcutta, for the Purpose of appearing to the Indictment found against her, which this Deponent verily believes she will do with the greatest Expedition: And this Deponent lastly saith, that he verily believes the said Nauderah Beigum will be in Calcutta in the Course of the present or ensuing Day; and that she will immediately surrender herself, and submit to such Order as the Court shall think proper respecting her.

Sworn at Calcutta, this 14th Day

of June, 1779, before me

J. Hyde.

خواجہ زکریا خان

And the said Coja Zekariah Khawn further maketh Oath, and saith, that he verily believes the Advice to go out of Calcutta was given on Occasion of those Friends having heard that Mr. Law, the Chief of Patna, and Mr. Young, one of the Provincial Council of Patna, against whom, as this Deponent hath heard and believes, the said Nauderah Beigum hath commenced an Action in the Supreme Court of Judicature at Fort-William in Bengal, for certain Injuries alledged to have been done by them to the said Nauderah Beigum, was coming from Patna to Calcutta, for the Purpose of prosecuting the said Nauderah Beigum at this present Sessions.

Sworn at Calcutta this 14th Day

of June, 1779, before me

J. Hyde.

خواجہ زکریا خان

(True Copy) William Johnson, Clerk of the Crown.

NUMBER VII.

Supreme Court of Judicature at Fort-William in Bengal.

AT a SESSIONS of Oyer and Terminer and Gaol-Delivery, held in and for the said Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Fourteenth Day of June, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

REX *versus*

NADURAH BEGUM, COJA ZACHARIAN KHAWN, GYRAT BEIG, INNOYETULLAH BEIG, KAUZEE MOAZUM BEIG, and HADGEE MAHOMED IVAUZ.

MR. *Jeddy*, on Behalf of Defendant *Nadurah Begum*, moves on an Affidavit of *Coja Zachariah Khawn*, that the Process of the Court, which is ordered to issue, may be suspended. Mr. *Lawrence* opposes the Motion, and, on hearing the Counsel on both Sides, ordered the Motion to be rejected for Want of sufficient Grounds.

Witness, Sir *Elijah Impey*, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord, One Thousand Seven Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,
June 14, 1779.

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

N U M B E R VIII.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

Filed June 16, 1779,

William Johnson, Clerk of the Crown.

C R O W N S I D E.

R E X *versus*

NAUDERAH BEIGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, KHAUZEE MOAZUM BEIG, and HADGEE
MAHOMED IVAUZ.

COJA ZECHARIAH KHAWN maketh Oath, and saith, that, soon
after the Death of *Shawbaur Beig Khawn*, deceased, which is now
about Thirty-two Months ago, he, this Deponent, was taken into Custody
at *Patna*, in the Province of *Babar*, together with *Gyrat Beig*, *Innoye-*
tullah Beig, *Khauzee Moazum Beig*, and *Hadgee Mahomed Ivaux*, four of
the Defendants above-named, where he remained confined for about
the Space of Seven Months, and was then sent, with the said *Gyrat Beig*,
Innoyetullah Beig, *Khauzee Moazum Beig*, and *Hadgee Mahomed Ivaux*, to
Morshedabad, to *Mahomed Reza Khawn*, who was, as this Deponent is
informed and believes, at that Time the Chief Criminal Magistrate among
the Natives in *Bengal* and *Babar*. And this Deponent further saith, that
he was dismissed by the said *Mahomed Reza Khawn*, together with the said
Gyrat Beig, *Innoyetullah Beig*, *Kauzee Moazum Beig*, and *Hadgee Mahomed*
Ivaux, about Sixteen Months ago, with a *Purwannah* or Order to the
Fouzdar of *Patna*; which *Purwannah* has been since exhibited in the
Cause wherein the said *Nauderah Beigum* was Plaintiff, and *Bahadur Beig*,
Kauzee Sabdee, *Muslie Barracktoolah*, and *Muslie Gullaum Mahkdoom*, were
Defendants, and is now filed in Court, as this Deponent has been in-
formed and verily believes; which *Purwannah* contained Orders to the
said *Pbouzdar*, as this Deponent verily believes, to restore to the said
Nauderah Beigum the Effects which had been taken from her; which
Order was, as this Deponent verily believes, founded on the said *Mahomed*
Reza Khawn's having judicially examined the two Writings mentioned
in the Indictment, presented and found, as this Deponent is advised and
believes, against this Deponent and the other Defendants above-named;
and having on such judicial Examination decided, that the said two Wri-
tings were true and genuine, made and signed by *Shawbaur Beig Khawn*,
deceased,

deceased, in his Life-time, and were not forged or counterfeit Writings made by this Deponent, or the other Defendants, or by any Person or Persons whatsoever.

Sworn this 15th Day of June, 1779,
before me J. Hyde.

Read, June 16, 1779.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER IX.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

Filed June 16, 1779.

William Johnson, Clerk of the Crown.

CROWN SIDE.

REX versus

NAUDERAH BEIGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,

IMDOWETILLAH BEIG, HADGE MAHOMED IVANE, and KAUZEE

MOAZEE BEIG.

PRAT BEIG maketh Oath, and saith, that the above-named Defendants, Nauderah Beigum, is a Woman of very high Rank, to whom it is esteemed among the *Muslimans* very injurious and disgraceful to appear in a publick Court of Justice on any Occasion whatsoever, and that her Appearing before any Man, except her near Relations, is esteemed disgraceful, though not in so high a Degree.

Sworn this 15th Day of June, 1779,
before me J. Hyde.

The Mark O of Gyrat Beig.

Read June 16, 1779.

James Durnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

NUMBER X.

In the Supreme Court of Judicature at Fort-William
in Bengal.

Filed June 16, 1779.

William Johnson, Clerk of the Crown.

CROWN SIDE.

R E X versus

NAUDERAH BEIGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, HADGEE MAHOMED IVAUZ, and KHAUZEE
MOAZUM BEIG.

GEORGE WROUGHTON maketh Oath, and saith, that a Bill of Indictment has been presented and found against the said Nauderab Beigum, Coja Zechariah Khawn, Gyrat Beig, Innoyetullah Beig, Hadgee Mahomed Ivaouz, and Khauzee Moazum Beig, for a supposed Forgery of one or more Deeds in the Persian Language; which said Indictment is founded on two Instruments, as this Deponent apprehends and believes, which were lately produced in a Cause, wherein this Deponent was Attorney for the said Nauderab Beigum, the Plaintiff, against Bababder Beig, Khauzee Sabdes, Mustee Barraktsolab, and Mustee Gulliam Mahomed, who were the Defendants: Because this Deponent was present on the Eleventh Day of this Instant June, when an Order was made by the Court for those two Persian Papers to be produced to the Grand Jury by Mr. Durnford, the Clerk of the Papers, for the Purpose of comparing the same with the said Indictment: And this Deponent further saith, that the said Instruments were, at the Trial of the same Cause, thoroughly investigated, and this Deponent verily believes, by this Honourable Court, and prayed to the Satisfaction of the said Court to have been fair and valid Instruments, and not forged by the said Nauderab Beigum, Coja Zechariah Khawn, Gyrat Beig, Innoyetullah Beig, Hadgee Mahomed Ivaouz, and Khauzee Moazum Beig, nor by either of them, as is alledged: And this Deponent lastly saith, that the said two Persian Papers were produced at the Trial of the said Cause, on the Part of the Defendants in the said Cause, and not on the Part of the said Nauderab Beigum, and have remained, as this Deponent

verily believes, in this Court, from that Time to the present: Wherefore this Deponent verily believes, that neither of the said Papers have ever been in the Possession of the said *Nauderah Begum* in *Calcutta*.

GEORGE WROUGHTON.

Sworn this 15th Day of June, 1779,
before me J. Hyde.

Read June 16, 1779,
James Durnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER XI.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

Filed June 16, 1779,

William Johnson, Clerk of the Crown.

CROWN SIDE.

R E X versus

NAUDERAH BEGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, HADJEE MAHOMED IVAUZ, and KHAUZEE
MOUZAM BEIG.

NAUDERAH BEGUM maketh Oath, and saith, that she hath been informed, that a Bill of Indictment has been preferred and found against her, and the other Defendants above-named, at the present Sessions of Oyer and Terminer, for a supposed Forgery of one or more Deed or Deeds in the Persian Language, and that such Bill of Indictment is founded on two Instruments, one called an *Hebab-nommah*, the other an *Escrour-Aam*, which, this Deponent hath been informed and believes, were lately produced in a Cause, wherein this Deponent was Plaintiff, and Babender Beig, Khauzee Saddee, Musfee Barrucktoolab, and Musfee Gullaum Mackdown were Defendants: And this Deponent saith, that she hath not been at any Time directly or indirectly concerned in the Forgery of such Instruments, or of either of them, or of any other Deed or Deeds, Instrument

OR

or Instruments whatsoever; and that she hath not at any Time directly or indirectly consented or agreed to the Forging or Counterfeiting of the said Instruments, or of either of them, or of any other Instrument or Instruments, Deed or Deeds whatsoever; but saith, that she doth verily believe that the said two Instruments, so produced in the said Cause, were and are true, just, and valid Instruments; and saith, that she is the more inclined so to believe, because two Instruments in Writing, which she understands and verily believes were the same Instruments, which were afterwards produced in the said Cause, were delivered into her Hands by her late Husband, *Shawbauz Beig Khawn*, deceased, in his Life-time; and saith, that the said Instruments, when so delivered to her by the said *Shawbauz Beig Khawn*, appeared to have been duly executed by him, and that the same bore respectively, as she believes, the Impression or Sign of the Seal or Chop of the said *Shawbauz Beig Khawn*, deceased.

Sworn this 16th Day of June, 1779,
before me *Robert Chambers*.

The Mark

Read June 16, 1779,
James Durnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

CROWN SIDE
NUMBER XII.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

Filed June 16, 1779;
William Johnson, Clerk of the Crown.

CROWN SIDE

R E X versus

NAUDERAH BEIGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, KAUZEE MOAZUM BEIG, and HADJEE
MAHOMED IVAUZ.

ZULFICAR KHAWN maketh Oath, and saith, that he set out for
Calcutta, in Company with the Defendant, *Nauderah Beigum*, about
the Hour of Seven o'Clock in the Morning of *Monday* the Fourteenth
Day of *June* Instant, and arrived in *Calcutta* about the Hour of Three
o'Clock

9 Clock in the Afternoon of the same Day: And this Deponent further saith, that the said *Nauderab Begum* has come to *Calcutta* aforesaid, for the sole Purpose, as she informed this Deponent, and as this Deponent verily believes, of surrendering herself to this Honourable Court.

Sworn at *Calcutta* this 15th Day
of *June*, 1779, before me

J. Hyde.

Read *June* 16, 1779.

James Durnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER XIII.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

Filed *June* 16, 1779.

William Johnson, Clerk of the Crown.

CROWN SIDE.

MEMORANDUM
REX versus

NAUDERAB BEGUM, *COJA ZECHARIAH KHAWN*, *GYRAT BEIG*,

INNOYETULLAH BEIG, *KHAUZE MOAZUM BEIG*, and *HADGEE*

MAHOMED IVAUZE.

COJA ZECHARIAH KHAWN, *Gyrat Beig*, *Innoyetullah Beig*, *Kbauzee Moazum Beig*, and *Hadgee Mahomed Ivauze*, severally make Oath, and say, that they have been informed and believe, that a Bill of Indictment hath been presented and found against these Deponents, and *Nauderab Begum*, the other Defendants above-named, for a supposed Forgery of one or more Deed or Deeds in the *Persian Language*; and that such Bill of Indictment is founded on two Instruments, one called an *Hebob-nemnah*, and the other an *Eccrab-Aum*, which were lately produced in a Cause, wherein the said *Nauderab Begum* was Plaintiff, and *Bahauder Beig*, *Khanwar Shader*, *Musfee Boreeshkissab*, and *Musfee Gullaum Mockdown*, were Defendants: And these Deponents say, that they severally were requested by *Shawbaur Beig Khawn*, since deceased, to affix; and that they

Proceedings in the Criminal Prosecution.

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they did accordingly affix their Seals as Witnesses to one of the said Instruments, called *Habshamah*, excepting this Deponent, *Hedge Mahomed Ivauz*, who put his Signature thereto: And these Deponents severally say, that they do verily believe, that the said two Instruments are true, just, and valid Instruments, and that they were the lawful Acts and Deeds of the said *Shawbauz Beig Khazan*; and further say, that they, these Deponents, have not been concerned directly or indirectly in the Forging or Counterfeiting of the said two Instruments, or either of them.

John Dunsford, Reading Clerk.

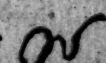
شاهزادہ باخان

(True Copy)
Sworn this 16th Day of June, 1779,
before the Court.

The Mark of  Gyrat Beig.

William Johnson, Clerk of the Crown.

عبد السلام

(True Copy)
The Mark of  Moazum Beig.

21st

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER XIV.

In the Supreme Court of Judicature at Fort-William
in Bengal.

Filed June 16, 1779.

William Johnson, Clerk of the Crown.

R. E. X. versus

NADURAH BEGUM, COJA ZECHARIAH KHAN, GYRAT BEIG,
INNOYSTULLAH BEIG, KAUZER MOAZUM BEIG, and HADERS
MAHOMED IVAUZ.

ZURHULLAH, Munshie, vs MAHOMED REZA KHAN.

THE late Nath Nazim maketh Oath, that he is well acquainted with the Signature and Hand-Writing of the said *Mahomed Reza Khan*, and has often seen him write; that the Persian Letter, hereunto annexed

nexed, is signed with the proper Hand-Writing of the said *Mahomed Reza Khan*; and that the Seal on the Cover of such Letter is the Impression of the Seal of the said *Mahomed Reza Khan*.

Sworn at Calcutta this 16th Day of June,
1779, before me J. Hyde.

منش ظہور الدار

Read June 16, 1779,
John Durnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

(ON THE COVER.)

To the Perusal of the Favourer, from whom the Support of his Friends is derived, Mister Naylor, whom God preserve! Be it sent.—Rubby it Saany, 20th Sun.

L. { *MABARUZ UL MULK, MAYEN UD DOWLAH KHAN,*
KHANAAN MEER MOHOMED REZA KHAN, BEHA- } S.
DER MUZZUFER JUNO.

(IN THE INSIDE.)

To him who is the Favourer, the Support of his Friend's Preservation.

AFTER my Desire of a Meeting, replete with Happiness, which is above Expression. It is made known to your Heart, the Spring of Friendship. Your joyful Letter having received, it pleased me, with the good Tidings you have written, that *Zekerea*, *Gyrat Beg*, *Enayet Ullah Beg*, *Mahomed Evuz*, who, for the Examination into the Forgery and Punishment thereof, were confined in the *Fouzdary Adaulut* of *Patna*, that, as they came under Confinement to *Murshedabad*, how were they there? where and how long did they stay, and in what Manner did they proceed to *Calcutta*? In *Murshedabad*, were they confined in Prison, or guarded, or at Liberty, when the *Subpana* arrived here, and carried them to *Calcutta*?

That I should send the Particulars of this, and a Detail of the Orders, taking a Copy from the Office of the above Papers.—It was understood, —*Mulla Zekerea*, and the others, after their Arrival at *Murshedabad*, were neither in Confinement, in Prison, or under Charge. *Hircarrabs* watched

نسخه
م ۲۳
دو صفا

مطالع صاحب جهان از نظر دوستان مسرین صاحب سلمه لک

مبارک ملک معنی الدوله خان خانان
میرزا رضا خان بهادر مطوع ملک

(In the Inside)

صاحب جهان از نظر دوستان مسرین صاحب سلمه لک
بجای نجات که زیاده از حد حضرت است مشهور فاطمه الحاد
مطالع میرزا اند خط مسرت نمط و مول خوده نموده حضرت
مسرین مطوع است این که لکنه اند که ذکر با و حضرت
و فعلیت این ملک و محمد منظم و حاجی محمد عوض که ملک خجسته
جعل و لکس و لکرای آن در عدالت خود ای عظمی اباد خود
ادرا که در قریه نام شده اباد امدید در کجا کونه و کجا و مانند
و که صورت روانه ملک لکس نموده در مرشد امدت قریه خانی ملک لکس
با نخله باقیه نمودند که سفینه طلب انوار در میار سیده انوار
قصص و حکم و حکام است و در اد فر کاعداست مذکوره فعل کرد است
مر سیده شود بدو راقب اند ملا ذکر با و عیبه بعد رسیدن مرشد اباد
در قریه و عیبه و ولادت بود و در یک حواله که نام بوده با فرد آمد
بر کاره غیر که آن امد بود در مرشد امدت نام بود در مرشد اباد سیده
بودند و یک سوم که مرشد امدت نام انوار سیده و انوار و انوار
شدند و حکم و حکام خری بدست ایانند که سیده بود و کاعداست
معتمد نامیده نیز مرشد امدت در عدالت است ایانند
حالا در عدالت و عدل آن و کاعداست کار است
ای معلوم بود از اقام بافت از ابا و محبت و وفای
و السلام

True Copy from Johnson
Library of the Crown
as collected by Major W. G. Allen M.A. 1894

25

55

Read June 16, 1779.
James Darnford, Reading Clerk.

William Johnson, Clerk of the Crown

Filed June 16, 1779,
William Johnson, Clerk of the Crown.

NORTH MAYLOR, Attorney to the District Court in the above indictment, maketh Oath, that the *Persian* Letter hereunto annexed, purporting to be addressed to him, was received by him, this Deponent, from *Mahomed Reza Khan*, in Answer to a Letter addressed to the said *Mahomed Reza Khan* by this Deponent, to the Purport mentioned in the Letter of the said *Mahomed Reza Khan*.

James Durnford, Reading Clerk.

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*In the Supreme Court of Judicature at Fort-William
in Bengal.*
Read June 16, 1779.
William Johnson, Clerk of the Crown.
and the Papers thereof. What I know I have written. Further Evidence
be with you, and I do not.

NADURAH BEGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
IMMUTULLAH BEIG, KAUZEE MOAZUM BEIG, and HADGEE
MAHOMED IVANZ.

EWAN LAW maketh Oath, that he is well conversant in the *Persian*
Language, and can read and speak the same; and that the Paper in
the *English* Language hereunto annexed is a true and faithful Translation of
the Original thereof in the *Persian* Language hereunto also annexed.

EWAN LAW.

Swear to before this 16th day
of June, 1779, before me
J. Hyde.

Read June 16, 1779.

James Durnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER XV.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

Filed June 16, 1779.

William Johnson, Clerk of the Crown.

CROWN SIDE.

R. E. X. versus

NADURAH BEGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
IMMUTULLAH BEIG, KAUZEE MOAZUM BEIG, and HADGEE
MAHOMED IVANZ.

EWAN LAW, one of the Prosecutors of the above Indictment, maketh
Oath, that the said Indictment has been preferred against the said
Nadurah Begum, Coja Zechariah Khawn, Gyrat Beig, Immutullah Beig,
Kauzee Moazum Beig, and Hadgee Mahomed Ivanz, for Forging and Pub-
lishing

Witnessing two certain Instruments in the *Persian* Language, purporting to have been executed by *Khojah Shamsah Khan* in his Life-time; to one of which said Instruments all of the Persons named in the said Indictment are Witnesses attesting the same, except *Nadurah Begum*; and to the other Instruments all of the said Persons are Witnesses, except *Nadurah Begum* and *Imamullah Beg*. That, from the Enquiries and Investigations which this Deponent has made touching the Forgery committed by the Persons above-mentioned, he verily believes, and is convinced in his own Mind, that they are guilty of the Forgery for which they now stand indicted, and that there will appear at the Trial of the said Persons sufficient Evidence to convict them thereof. That this Deponent, in his judicial Capacity of one of the Members of the Provincial Council at *Patna*, together with the other then Members thereof, passed a Decree in a certain Suit before the said Council, touching the Claim of the said *Nadurah Begum* to the Estate of her deceased Husband, founded by her on the two Instruments afore-mentioned, on a full Conviction of such Instruments having been forged and counterfeited; that, in Consequence of the Acts done under the Decree and Orders made in the Suit before the Council at *Patna* afore-mentioned, a certain Action at Law was commenced by the said *Nadurah Begum*, against *Bahadur Beg*, the Son of one *Allan Beg*, the Heir of the deceased *Shamsah Beg*, and *Gowah Sahib*, *Misfir Barkatullah*, and *Misfir Gullam Mahomed*; the three last named Defendants being the Persons who executed the Orders which issued in the afore-mentioned Suit in the Provincial Council afore-mentioned. That, in such Action so commenced in this Honourable Court by the said *Nadurah Begum*, a Judgment has been given against the Defendants in Damages to the Amount of Sixty Rupees three hundred thousand, in Consequence whereof, the said *Bahadur Beg*, *Misfir Barkatullah*, and *Misfir Gullam Mahomed*, are now confined in the Goal of *Calcutta*, and, as this Deponent believes, will remain there for their whole Lives, unless by the Disclosure of the Forgery committed by the Persons indicted, and their Conviction, the said Judgment may be set aside; that this Deponent, from a Sense of the Mischief which has resulted from the Commission of the Forgery alleged against the Persons indicted in Manner afore-mentioned, and from a Regard to publick Justice, this Deponent has been induced to prosecute the said Indictment, and not from any Malice towards the Prisoners, or any undue or improper Motives: And this Deponent further saith, that, having been informed, that an Instrument or *Perwannah*, under the Seal of *Mahomed Reza Khan*, had been produced at the Trial of *Nadurah Begum*, against *Bahadur Beg* and others, purporting to be a Decision or Judgment on the Validity of the Instruments afore-mentioned, and being desirous of being informed of the Truth thereof, previous to his, this Deponent's, determining whether he should enter on a Criminal Prosecution against the Persons now indicted, he did, on this Deponent's Arrival at *Cossimbazar*, address a Letter to *Mahomed Reza Khan*,

(On the Cover.)

مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال
مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال

۲۲۶۰

مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال
مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال
مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال

(In the Inside.)

مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال
مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال
مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال
مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال
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مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال
مطابق طومار تبیین لیاقت پهلوان امین الدوله سزاوارت لایحه معاد در هر حال

True Copy

Wm. J. Brown

Clerk of the Court

as collected by Khayr ad Dien Munsheer

about the Month of April, One Thousand Seven Hundred and Seventy-eight, when they were transmitted by him, this Deponent, to Calcutta: And this Deponent further saith, that the said *Imam-ul-Beg*, *Kauze Moazzam Beg*, and *Haidar Mahomed Jours*, had not to the best of this Deponent's Knowledge and Belief, quitted Patna on the First of *Jumay* the 1st of *awal* aforesaid, and consequently could not have been present before *Mahomed Reza Khan*, at the Time the *Perwannah* aforesaid issued: And this Deponent verily believes that the same was procured on a Representation made by some *Kacheel*, or by Means of Letters or Petitions addressed to the said *Mahomed Reza Khan*: And this Deponent further saith, that he verily believes, that no judicial Decision, or Decision whatsoever, has been made and passed by the said *Mahomed Reza Khan*, on the Criminality or Innocence of the Persons now indicted, nor did this Deponent ever hear of any such Decision till some Time after the Trial of the Action of *Nadurab Begum* against *Babudre Beg* and others, when this Deponent understood the *Perwannah* aforesaid had been exhibited; and this Deponent is very confident, that, if any such Decision had passed, he should have heard thereof: And this Deponent further saith, that the said *Nadurab Begum*, according to his Understanding and Belief, is not a Woman of Rank superior to that which is considered as a common Gentlewoman among the *English*; that, both from her Situation in Life, previous to her Marriage with *Shawbans Khan*, and from her Rank acquired by her Marriage, she is not entitled to be considered, or to claim any superior Rank than that aforesaid mentioned, the said *Shawbans Khan* having been a Man originally of low Degree, and borne up by, and deriving his Consequence from, his Connection with the *English*, with whom he stood on the footing of an old Commandant of *Sappers* who had been rewarded for long Services. That the Pretence of the high Rank and Quality of *Nadurab Begum* has been used to agitate, as this Deponent believes, the Circumstances of her Case, and to avoid the usual Commitment in Case of Indictments found against Persons for capital Felonies. That it has been represented, that the said *Shawbans Khan* was an *Onkar* or *Noble* of the *Empire*; whereas in Truth, though the said *Shawbans Khan* had obtained from the *Emperor* the Title of *Mustafiz Jung*, the same gave him in Fact no real Consequence; that such Titles were easily procured on simple Application and Request to the *Emperor*. That *Mr. Rumbold*, when Chief of *Patna*, procured, on his mere Request, to one of the *Emperor's* Officers, a Title for his private *Maniky*, and could, as this Deponent verily believes, have procured the like Honours, if such they might be called, for his lowest menial Servant, had he thought proper to have solicited the same: And this Deponent further saith, that Titles so obtained as aforesaid, through the Influence of the *English*, were rather a Matter of Derision than a Mark of real Honour or Respect among the Natives: And this Deponent lastly saith,

saith, that he is conversant in the *Persian* Language, and can read and speak the same, and that the *English* Paper, hereunto annexed is a true and faithful Translation of the Original *Persian* Letter hereunto also annexed.

EWAN LAW,

Sworn this 16th Day of June, 1779,

before me J. Hyde.

(True Copy)

William Johnson, Clerk of the Crown.

**In the Supreme Court of Judicature at Fort-William
in Bengal.**

Filed June 16, 1779,

William Johnson, Clerk of the Crown.

R E X versus

NADURAH BEGUM, COJA ZACHARIAN KHAN, GYRAT BHO,

INNOYITULLAH BELO, KAUFER MOATUM BHO, and HABIB,

MAHOMED WAUZ.

ZURNULLAH, Plaintiff, to MAHOMED REZA KHAN,

THE late Noik Nazim maketh Oath, that he is well acquainted with

the Signature and Hand-Writing of the said Mahomed Reza Khan

and has often seen him write, that the *Persian* Letter hereunto annexed

is signed with the proper Hand-Writing of the said Mahomed Reza

Khan, and that the Seal on the Cover of such Letter is the Impression

of the Seal of the said Mahomed Reza Khan.

Sworn at Calcutta, this 16th Day

of June, 1779, before me

J. Hyde.

(True Copy)

William Johnson, Clerk of the Crown.

ON

Proceedings in the Criminal Prosecution.

(ON THE COVER.)

Filed Jan 16, 1779.
William Johnson, Clerk of the Crown.

To the enlightened Perusal of Him, who is the very kind Favourer of his Friends,
Mr. Anderson Dowlah, Mistr Evan Law, Behader Hurzubber Jung.—
Be it sent. 30 Jumny dyal Oval, 20th Sun.

MUDABUZ-UZ-MULK MAHEND UD DOWLAH KHAN,
Lo. KHANNAH MERR MAHOMED REZA KHAN, BEHA. S.
DER MUZZUFFER JUNG.

(IN THE INSIDE.)

To the very kind Favourer of his Friends, Health!
THE Note written by Friendship I received. It pleased and informed me. You wrote in a friendly Manner, that, in the Cause of Nadarab Begum and Behader Beg, respecting the Property of Shabbaz Beg Khan, deceased, which carries a Dispute on an Enquiry about the Hebbab, which the Gentlemen of the Council of Patna declared to be a Forgery, the Vukeel of the above Begum brought forward a Perwannab under my Seal; and that I should write distinctly, whether the Examination and Decision of this Cause passed me or not.

My kind Sir, this Perwannab was an *Isbary* one. It is written in the above Perwannab, that having thoroughly understood this Matter: This is the Style of an *Isbary* Perwannab; and the Order thereon is suspended till the Trial. Accordingly, after writing this Perwannab, the Surat baal in this Cause, sent by *Abd-ul-Rusbed Khan*, arrived, no final Conclusion and Decision was signed, when the Cause went from hence. If an Order or Orders of Decision, after the Arrival of the Surat baal had been signed, I had certainly wrote to you. Further Pleasure attend you and Peace.

My Friend,

You have written, that I should write on a separate *Fird*, and put my great Seal thereon, whether this Cause had been settled or not. Whatever related to this Cause I have clearly written in Answer to your Note; to write on a *Fird*, and place my great Seal, is not customary, or otherwise I certainly should have written so. What you wrote of the Desire of Meeting reminded me of your sincere Regard. May the great God preserve you! Further Pleasure attend you and Peace.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

NUMBER XVI.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

Filed June 16, 1779.

William Johnson, Clerk of the Crown.

REX versus

NADURAH BEGUM, COJA ZACHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, KAUSER MOAZUM BEIG, and HAD-
ZEE MAHOMED IVAUZ.

ZULFUKUR ALLY maketh Oath, that the *Persian Paper*, here-
unto annexed, was copied by him, this Deponent, from the Original thereof, deposited, as this Deponent understood, among the Records of this Honourable Court, with Papers, in the Cause of *Nadurah Begum* against *Bebabder Beig* and others; and this Deponent verily believes, that the same is a true and faithful Copy of the Original thereof.

Sworn at Calcutta this 16th Day
of June, 1779, before me

J. Hyde.

Read June 16, 1779.

James Durnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER XVII.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

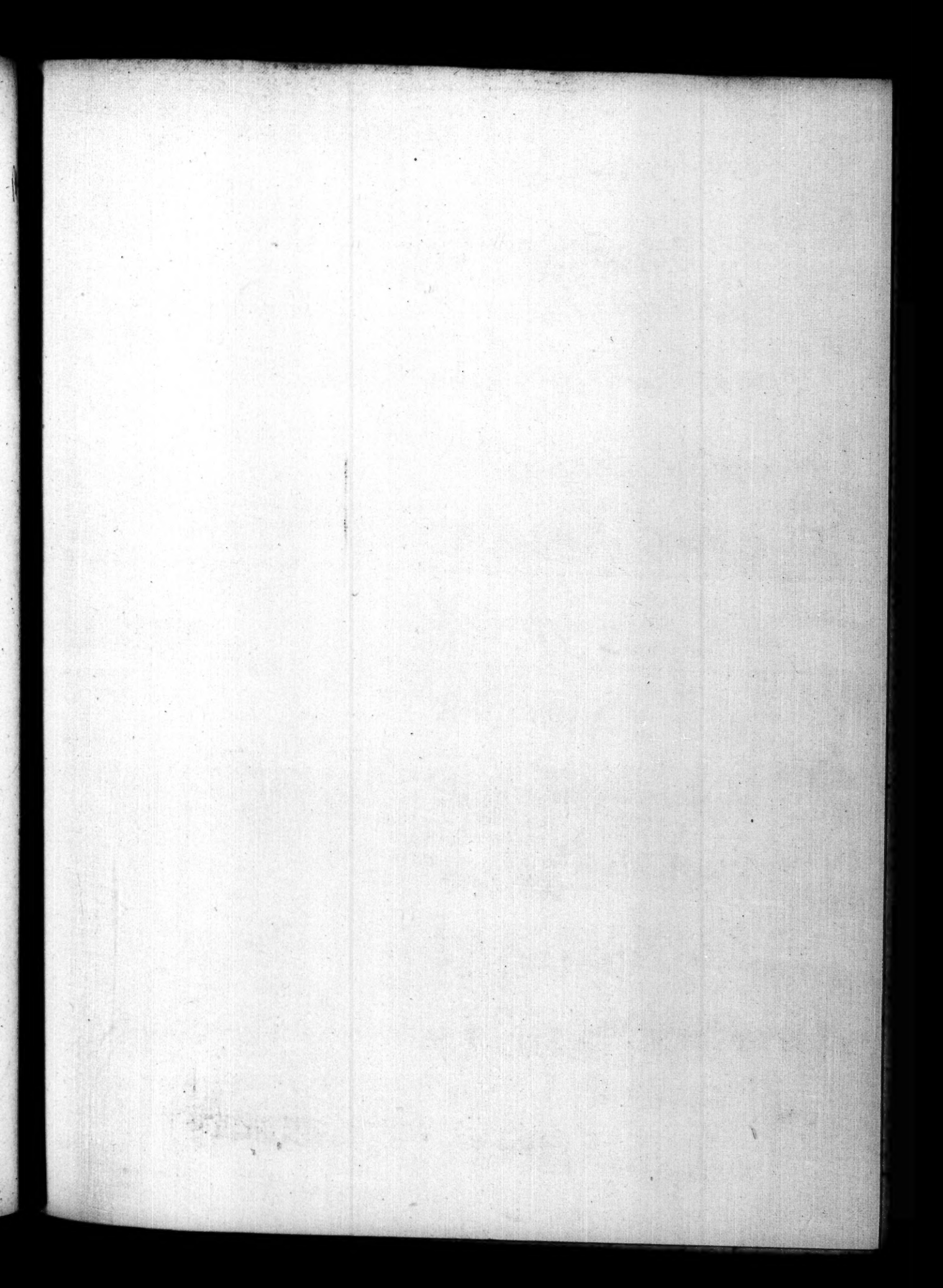
Filed June 16, 1779.

William Johnson, Clerk of the Crown.

REX versus

NADURAH BEGUM, COJA ZACHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, KAUSER MOAZUM BEIG, and HAD-
ZEE MAHOMED IVAUZ.

MULLIVY MAHUMMUD COSSIM maketh Oath, that he was for-
merly *Nayb* to *Sadurul Hack Khan*, *Deroga* of the *Fouzedarry Adawlut*
and *Nayb Naxim*, and well knows, that, in Criminal Cases, his Master,
Sadurul Hack Khan, never used himself to have Parties before him for
Trial,



(On the Cover)

در مودله نادر اسکندر شاه
رفعت و عوایا پناه عهده اسکندر خان دارو عه
عده الی عهده نادر و در ساله عالم مادسه عهده
سارر مملکت معنی لادله اسکندر شاه خانان نادر
مطهر خلیف ۱۱۸۱

رفعت و عوایا پناه عهده اسکندر خان دارو عه
چون که انبار میخانه در بین حیات و ثبات عهده و عهده
قلم مملکت نادر اسکندر شاه لادله اسکندر شاه
در دیگر اوقات عهده نادر اسکندر شاه عهده کامل
نادر عهده قلم و متصرف کردا نادر عهده که در عهده
موجب که نادر اسکندر شاه عهده نادر اسکندر شاه
تحت نیت و عهده نادر اسکندر شاه عهده نادر اسکندر شاه
بنوا نادر اسکندر شاه عهده نادر اسکندر شاه
و نادر اسکندر شاه عهده نادر اسکندر شاه
مقوم و نادر اسکندر شاه عهده نادر اسکندر شاه
و نادر اسکندر شاه عهده نادر اسکندر شاه
مقام عهده نادر اسکندر شاه عهده نادر اسکندر شاه

True Copy William Johnson

Clerk of the Crown

7089 21 2063
as collated by Rhyr Old Decu. Hunsby.

Proceedings in the Criminal Prosecution.

63

Trial, but Proceedings (and, in great Cases, *Spot at Mulla also*) were used to be transmitted to his said Master from his *Mofassul Fougedarry* Officers, which were referred by the said *Suddurul Hack Khan* to the Scrutiny of his own *Cutcherry* Officers, where he himself was wont to sit. That upon these Proceedings, *Suddurul Hack Khan's* Officers used to draw out and present an Abstract State of each Case to him, with a *Futwab* annexed, sealed by them, viz. the Head *Canzy* of the *Canzy's*, a *Musfi*, and three *Mulliwies*. This *Futwab* and State of the Case, he himself kept, and his *Nayb* drew out therefrom a *Wajul ul Arz*, or Representation of each Case and *Futwab*; and, for his Order thereon, he used to write upon the Top of it a brief Mandate, either to *be done*, *be done*, *be done*, &c. a Number of these, he used to send with a *Peramnah*, to his *Fougedarry* to be enforced.

Sworn at Calcutta this 16th Day
of June, 1779, before me

June 16.

Read June 16, 1779.

James Durnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

In the Supreme Court of Judicature at Fort-William
in Bengal.

Filed June 16, 1779.

William Johnson, Clerk of the Crown.

(True Copy) R E X versus

NADURAH BEGUM, COJA ZAGHARIAH KHAN, GYRAT BEIG,
INNOYETULLAH BEIG, KAUSER MOHAMMAD BEIG, and HADGER
MAHOMED IVAUZ.

MOULUVY SHERATET ULLAH maketh Oath, that he was employed and acted as a *Mosley* in the *Shah's Poydahary* Court at *Murshedabad* for about Six Months, viz. from some Time in the Month of *Zehedge*, in the Year One Thousand One Hundred and Ninety-one of the *Hajery*, to the End of *Immydel Saany* in the same Year, being to the Time the *Nabob Mahomed Reza Khan* was removed from his Office of *Nab* *Nab* that he had an Opportunity of seeing the Records, and

was acquainted with the Manner and Forms of passing Decisions in the said Court, Rules for which were established and regularly observed. — That the Rule of Practice was for the *Moulvies*, after having read over the Trial referred from the inferior Courts, to make an Abstract of the Cause, and to pass a *Furwa* thereon, which was afterwards superscribed by the *Nab Nāzim* briefly in his own Hand-Writing, expressing the Order which he passed. That this was then sent to the *Mussufel* to be carried into Execution, but never delivered to the Parties, or any of them. Copies of these Proceedings and Orders used to be kept in the Office under the Seal of the *Moulvies*. — That, during the Time that he, this Deponent, was in the *Sudder Adawlut* at *Marshedabad*, the Cause of *Caja Zakeriab* and others, accused of Forgery, was depending before that Court; and that he has an assured and certain Knowledge, that no *Furwa* was given or Decision whatsoever passed respecting that Cause, before the *Nabob Mubymed Reza Khan's* Removal. That he, this Deponent, has seen a *Persian Paper*, purporting to be the Copy of a *Purwanah* from the *Nabob Mubymed Reza Khan* to *Abd-ul-Rushud Khan*, dated the First of *Jimyduel* *Oval*, the Nineteenth Year of the Reign; which he declares is not according to the Form and Practice of Decisions in that Court, but that the same is, in his Opinion, an *Isbaary Purwanah*; which is usually given on an *ex parte* Representation of one of the Parties directing an Enquiry, and is never understood to be a Decree or Decision.

Sworn at *Calcutta* this 16th Day of June,
1779, before the Court.



William Johnson, Clerk of the Crown.

Read June 16, 1779.

James Darnford, Reading Clerk.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

NUMBER XIX.

Supreme Court of Judicature at Fort-William in Bengal.

AT a Sessions of Oyer and Terminer and Gaol-Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Sixteenth Day of June, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

R E X versus

NADURAH BEGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG, INNOYRTULLAH BEIG, KAUSZEE MOAZUM BEIG, and HADGEE MAHOMED IVAUZ.

Nadurah Begum, Coja Zechariah Khawn, Gyrat Beig, Innoyetullah Beig, Kauszee Moazum Beig, and Hadgee Mahomed Ivauz, surrendering themselves into Custody.

MR. Brix moves upon the Affidavits of Coja Zechariah Khawn, Gyrat Beig, George Wroughton, Nadurah Begum, Zulfica Khawn, and the Joint-Affidavit of Coja Zechariah Khawn, Gyrat Beig, Innoyetullah Beig, Kauszee Moazum Beig, and Hadgee Mahomed Ivauz, that they, the said Nadurah Begum, Coja Zechariah Khawn, Gyrat Beig, Innoyetullah Beig, Kauszee Moazum Beig, and Hadgee Mahomed Ivauz, may have Time to plead till Wednesday the Thirtieth of June, and that they may be admitted to Bail till that Time. Mr. Lawrence, of Counsel for the Prosecution, opposes their being admitted to Bail on three several Affidavits of Ewan Law, two Affidavits of Zurbullab Munsee, and on the several Affidavits of North Naylor, Zulfiker Ally, Mullooy Mobummed Cossim, and Mullooy Sherayet Ullab, and on hearing Counsel on both Sides; and on Mr. Lawrence's consenting to the Time for Pleading; and on Mr. Naylor's, Attorney for the Prosecution, admitting the Sufficiency of the Parties proposed as Bail; and on Hyderam Bonagee, and Durgaram Chuckerbutty, becoming Bail for the Defendant, Nadurah Begum, each in the Sum of Sixty Rupees ten Thousand, and in three Thousand Sixty Rupees for each of the other

Defendants, for their Appearance, at the Sitting of the Court on *Wednesday* the Thirtieth of *June*. It is ordered, that they, the said *Nadurab Begum*, *Coja Zechariah Khawn*, *Gyrat Beig*, *Innoyetullah Beig*, *Kauzee Moazum Beig*, and *Hadgee Mahomed Ivauz*, be admitted to Bail till the Sitting of the Court on *Wednesday* the Thirtieth of *June*, and have Time to plead till that Time.

Witness, *Sir Eliab Impey*, Knight, at *Fort-William* aforesaid, this Tenth Day of *June*, in the Year of our Lord One Thousand Seven Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,
June 16, 1779.

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

It is ordered, that the said Defendants, for their Appearance, at the Sitting of the Court on *Wednesday* the Thirtieth of *June*, be admitted to Bail till the Sitting of the Court on *Wednesday* the Thirtieth of *June*, and have Time to plead till that Time.

Witness, *Sir Eliab Impey*, Knight, at *Fort-William* aforesaid, this Tenth Day of *June*, in the Year of our Lord One Thousand Seven Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,
June 16, 1779.

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER XX.

Supreme Court of Judicature at Fort-William in Bengal.

AT a Sessions of Oyer and Terminer and Gaol-Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Twenty-ninth Day of June, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth

R. E. X. *versus*

NADURAH BEGUM, COJA ZACHARIAH KHAWN, GYRAT BEIG,

INNOYETULLAH BEIG, KAUZER MOAZUM BEIG, and HADGEE

MAHOMED INAUZ.

THE Defendants being present in Court, it is ordered, that the Indictment be read to them, upon the Motion of Mr. Tilgman, of Counsel for the said Defendants.

Witness, Sir Eliab Impey, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord One Thousand Seven Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,

June 29, 1779

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

Supreme

Supreme Court of Judicature at Fort-William in Bengal.

AT a SESSIONS of Oyer and Terminer and Gaol-Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Twenty-ninth Day of June, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

R E X *versus*

NADURAH BEGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG, INNOYETULLAH BEIG, KAUZEE MOAZUM BEIG, and HADGEE MAHOMED IVANUZ.

THE Indictment having been read, Mr. *Thomson*, of Counsel for the Defendants, moves to have the Indictment quashed for Insufficiency, and that the Defendants may not be put to answer. Mr. *Lawson*, of Counsel for the Prosecution, opposes the Motion; and, on hearing Counsel on both Sides, it is ordered, that the Motion stand over till Monday the Fifth Day of July next.

Witness, Sir *Elijah Impey*, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord One Thousand Seven Hundred and Seventy-nine.

Wroughton, Attorney,
June 29, 1779.

By the Court,

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

NUMBER XXI.

Supreme Court of Judicature at Fort-William in Bengal.

AT a Sessions of Oyer and Terminer and Gaol-Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Twenty-ninth Day of June, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

R E X versus

NADURAH BEGUM, COJA ZACHARIAH KHAWN, GYRAT BEIG, INNOYETULLAH BEIG, KAUZEE MOAZUM BEIG, and HADGEE MAHOMED IVAUZ.

IT is ordered, that the Defendants have Time to plead till Monday the Fifth Day of July next, upon the Motion of Mr. Sealys, of Counsel for the Defendants.

Witness, Sir *Elijah Impey*, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord, One Thousand Seven Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,

June 29, 1779.

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

(True Copy)

Supreme

NUMBER

NUMBER

Supreme Court of Judicature at Fort-William in Bengal.

AT a Sessions of Oyer and Terminer and Gaol Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Twenty-ninth Day of June, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

R E X versus

NADURAH BEGUM, COJA ZACHARIAH KHAWN, GYRAT BEIG, INNOYETULLAH BEIG, KAUSER MOAZUM BEIG, and HADGEZ MAHOMED IVANZ,

ON the Defendants entering into fresh Recognizances to appear and plead to the Indictment, on Monday the Fifth of July next, the Defendant, Nadurab Begum, in Twenty Thousand Sicca Rupees, and two Securities in Ten Thousand Sicca Rupees each, and each of the other Defendants in Six Thousand Sicca Rupees, and two Securities each in Three Thousand Sicca Rupees for each of the said other Defendants, It is ordered, that the several Recognizances taken on the Sixteenth Instant, for the Defendants to appear and plead To-morrow, may be discharged, upon the Motion of Mr. Sealy, of Counsel for the Defendants.

Witness, Sir Elijah Impey, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord One Thousand Seven Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,
June 29, 1779.

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

N U M B E R XXII.

Supreme Court of Judicature at Fort-William in Bengal.

A T a Sessions of Oyer and Terminer and Gaol-Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Fifth Day of July, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

R E X versus

NAUDERAH BEIGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG, INNOYETULLAH BEIG, KAUZEE MOAZUM BEIG, and HADGER MAHOMED IVAUZ.

T H E Defendants being brought before the Court, and the Court having given their Opinion on the Motion, made by Mr. Tilghman, and agreed to by him on the Part of the Defendants, and Mr. Lawrence, on Behalf of the Prosecution, on the Twenty-ninth of June last. It is ordered, that the Indictment be considered insufficient, that the Defendants be not put to answer it, and that it therefore be quashed.

Witness, Sir **Elijah Impey**, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord One Thousand Seven Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,

June 5, 1779.

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER XXIII.

Supreme Court of Judicature at Fort-William in Bengal.

AT a Sessions of Oyer and Terminer and Gaol-Delivery, held in and for the Town of Calcutta and Factory of Fort-William in Bengal, and the Limits thereof, and the Factories subordinate thereunto, by Adjournment, on the Fifth Day of July, One Thousand Seven Hundred and Seventy-nine.

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

REX versus

NADURAH BEGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG, INNOYETULLAH BEIG, KAUZEE MOAZUM BEIG, and HADGEE MAHOMED IVAUZ.

THE Indictment being quashed, it is ordered, that the several Recognizances of the Securities for the said Defendants, and of the said Defendants themselves, taken the Twenty-ninth of June last, to appear and plead this Day, be discharged, upon the Motion of Mr. Tilghman, of Counsel for the said Defendants.

Witness, Sir *Elijah Impey*, Knight, at Fort-William aforesaid, this Tenth Day of June, in the Year of our Lord One Thousand Seven Hundred and Seventy-nine.

Wroughton, Attorney,

July 5, 1779.

By the Court,

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

NUMBER XXIV.

In the Supreme Court of Judicature at Fort-William
in Bengal.

GEORGE the Third, by the Grace of God, of Great
Britain, France, and Ireland, King, Defender of the
Faith, and so forth.

Third Term in the Year of our Lord Christ One Thousand
Seven Hundred and Seventy-nine.

R E X versus

NADURAH BEGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, KAUZER MOAZUM BEIG, and HADDER
MAHOMED IVAUZ.

MR. Brix, on Behalf of Defendant, Nadurab Begum, moves for a Copy
of Indictment, in Order to bring an Action thereupon for a mani-
ficious Prosecution, if the Court shall think proper so to do. It is ordered to
postpone the Motion till the Bench should be full.

Witness, Sir Elijah Impey, Knight, at Fort-William aforesaid, this Tenth
Day of July, in the Year of our Lord Christ One Thousand Seven
Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,

July 10, 1779.

(True Copy)

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

William Johnson, Clerk of the Crown.

NUMBER

12

NUMBER

NUMBER XXV.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

GEORGE the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.

Third Term in the Year of our Lord Christ One Thousand Seven Hundred and Seventy-nine.

R E X versus

NADURAH BEGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
INNOYETULLAH BEIG, KAUZEE MOAZUM BEIG, and HADGEE
MAHOMED IVAUZ.

MR. *Bris*, on Behalf of the Defendant, *Nadurab Begum*, renews his Application for a Copy of Indictment. It is ordered, that Notice of this Motion for *Munday* next be given to the Prosecutors.

Witness, Sir *Elijah Impey*, Knight, at *Fort-William* aforesaid, this Tenth Day of *July*, in the Year of our Lord Christ One Thousand Seven Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,

July 10, 1779.

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

NUMBER XXVI.

In the Supreme Court of Judicature at Fort-William
in Bengal.

GEORGE the Third, by the Grace of God, of Great
Britain, France, and Ireland, King, Defender of the
Faith, and so forth.

Third Term in the Year of our Lord Christ One Thousand
Seven Hundred and Seventy-nine.

R. E. X. versus

NADURAH BEIGUM, COJA ZECHARIAH KHAWN, GYRAT BEIG,
IMNOYETULLAH BEIG, KAUSHI MOAZUM BEIG, and HADDER
MAHOMED IVAUZ.

MR. Bris, on Behalf of Defendant, *Nadurah Begum*, moves, that a
Copy of the Indictment may be granted her, in Order to bring
an Action thereupon for malicious Prosecution, if she shall think proper
so to do. Mr. Lawrence, of Counsel for Mr. Law and Mr. Young, the
Prosecutors, opposes the Motion, and, on hearing Counsel on both Sides,
it is ordered to defer the Opinion of Court thereupon till after the Trial
of a Cause now pending and undetermined on the Plea Side of the Court,
wherein the said *Nadurah Begum* is Plaintiff, and the said *Ewan Law*, and
William Young, and one *Shearman Bird* are Defendants.

Witness, Sir *Elijah Impey*, Knight, at *Fort-William* aforesaid, this
Twelfth Day of July, in the Year of our Lord Christ One Thousand
Seven Hundred and Seventy-nine.

By the Court,

Wroughton, Attorney,

July 12, 1779.

William Johnson, Clerk of the Crown.

(True Copy)

William Johnson, Clerk of the Crown.

NUMBER

NUMBER XXVII.

*In the Supreme Court of Judicature at Fort-William
in Bengal.*

NADERAH BEGUM, Plaintiff,

Verfus

BEHADUR BEG and OTHERS, Defendants.

JOHN TAYLOR, of Calcutta, in the Kingdom of Bengal, Factor, in the Service of the United Company of Merchants of England trading to the East-Indies, maketh Oath, and saith, that, in or about the Beginning of the Month of January, in the Year One Thousand Seven Hundred and Seventy-seven, he, this Deponent, being then officiating for Mr. Henry Richardson, who then held the Office of *Persian Translator* to the Provincial Council of Patna, did reduce into the English Language a *Persian Paper*, purporting to be a Report from the *Cauzer and Mustees of Patna*, relative to the Right of Immorance claimed respectively by *Behadur Beg* and *Naderah Begum*, to the Estate and Effects of *Shaw Ban Beg Khan*, deceased; which Paper, to the best of this Deponent's Recollection, was sent for Translation to him by the then acting Chief of the Provincial Council of Patna, or the *Persian Translator*, Henry Richardson aforesaid, and which he, this Deponent, then understood and believes, had been delivered to the said acting Chief of the said Provincial Council, by or from the said *Cauzer and Mustees of Patna* as their judicial Report on the Merits of a Suit then depending between *Behadur Beg* and *Naderah Begum* aforesaid, which this Deponent believes had been referred by the said Provincial Council to the said *Cauzer and Mustees*, purposely for their judicial Report on it. And this Deponent further saith, that the said Translation of the above-mentioned Paper or Report he hath been informed, and verily believes, was afterwards exhibited in the Supreme Court of Judicature at Calcutta, in the Trial of a Cause between *Naderah Begum* and *Behadur Beg* aforesaid, and others: And he, this Deponent, further saith, that he did reduce into the English Language the said *Persian Paper* or Report truly and faithfully to the best of his Knowledge and Ability: And this Deponent further saith, that the Word *Hebbanama*, which this Deponent hath named in the English Version of the said Paper or Report, a *Will*, and the Word *Ekrauraum*, which in the same Paper he hath called a *Deed of Gift*, he, this Deponent, believes are technical Terms for Deeds or Instruments in the *Persian Language*, which this Deponent understood from the Explanation which he received from the *Moonsee* who attended this Deponent, during the Time that he was engaged

gaged in making the above-mentioned translate, as well as from his, this Deponent's Knowledge of the *Persian* Language, to be synonymous to the Words *Will* and *Deed of Gift* in the *English* Language.

And this Deponent further saith, that he formerly acted in the Capacity of *Persian* Translator to the Provincial Council or Committee of Revenue at *Calcutta*, for a Period of about Eight Months, and does not recollect, in the Course of the Business of his said Office of *Persian* Translator, or before or after the said Period to the Time that the above-mentioned translate was made, that the Words *Hebbanama* and *Ekrauraum* ever occurred to him, if they occurred at all, as conveying, in his Opinion, any other technical Signification than that which this Deponent has given to them in the aforesaid translate.

And he, this Deponent, further saith, that having made the said translate, he sent the same to the said acting Chief of the Provincial Council, or to Mr. *Henry Richardson*, the said *Persian* Translator, to the best of this Deponent's Knowledge and Belief.

Sworn at *Calcutta* this Day of (Signed) *J. Taylor.*
January, 1780, before me.

This Affidavit was sworn to by the Gentleman whose Name it bears in the Court-House at *Calcutta* the 13th of *January*, 1780, before the Chief-Justice Sir *Elijah Impey*, who thought proper afterwards to erase his Name from the Original, saying, that the Affidavit was a voluntary one, not as entitled, in the Cause of *Naderab Begum, versus Behader Beg*, and that the Governor-general and Council were as competent as himself to take such Affidavits.

gaged in making the above-mentioned translation, as well as from his Dependent's knowledge of the French Language, to be spontaneous to the Words W and D in the French Language.

And this Dependent further saith, that he formerly acted in the Capacity of Paymaster to the Provincial Council of Commerce of Revenue at Calcutta for a Period of about Eight Months, and does not recollect, in the Course of the Business of his said Office of Paymaster, or before or after the said Period to the Time that the above-mentioned translation was made, that the Words *W* and *D* were ever occurred to him, if they occurred at all, as conveying, in his Opinion, any other technical Signification, than that which this Dependent has given to them in the aforesaid translation.

And he, this Dependent, further saith, that having made the said translation, he sent the same to the said Acting Chief of the Provincial Council, or to Mr. Henry Richardson, the said Paymaster, to the best of this Dependent's Knowledge and Belief.

Sworn at Calcutta this Day of (Signed) J. Taylor
January, 1780, before me

This Affidavit was sworn to by the Gentleman whose Name it bears in the Court House at Calcutta the 14th of January, 1780, before the Chief Justice Sir Philip Bayly, who thought proper afterwards to call his Name from the Original, saying, that the Affidavit was a voluntary one, not as entered, in the Cause of *Richard Bayly* against *Richard Bayly*, and that the Governor-General and Council were as competent as himself to take such Affidavits.